

# ATTACHMENT 49

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Profitt, Terry

April 8, 2014

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IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

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IN RE: PROCESSED EGG PRODUCTS | MDL NO. 2002

ANTITRUST LITIGATION | 08-MD-02002

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THIS DOCUMENT RELATES TO ALL |  
DIRECT ACTION PLAINTIFF ACTIONS |

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IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS  
TWENTY-NINTH JUDICIAL DISTRICT

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ASSOCIATED WHOLESALE GROCERS, |

INC., et al., |

Plaintiffs, |

v. | Case No. 10-cv-2171

UNITED EGG PRODUCERS, et al., |

Defendants. |

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Tuesday, April 8, 2014

9:00 a.m.

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VIDEOTAPED DEPOSITION OF TERRY W. PROFITT

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<p style="text-align: center;">2</p> <p>1 Videotaped deposition of TERRY W. PROFITT, convened      2 at the law offices of Nilan Johnson Lewis, P.A., 120      3 South 6th Street, Suite 400, Minneapolis, Minnesota      4 55402, pursuant to notice, the proceedings being      5 recorded stenographically by Jonathan Wonnell, a      6 Registered Professional Court Reporter (NCRA #835577)      7 and Notary Public of the State of Minnesota, and      8 transcribed under his direction.</p>	<p style="text-align: center;">4</p> <p>1 APPEARANCES: (Cont'd)      2 On behalf of the Direct Purchaser Plaintiffs:      3 DANIEL C. HEDLUND, ESQ.      4 Gustafson Gluek, PLLC      5 Canadian Pacific Plaza      6 120 South 6th Street, Suite 2600      7 Minneapolis, Minnesota 55402      8 (612) 333-8844      9 dhedlund@gustafsongluek.com</p> <p>10</p> <p>11 On behalf of Cargill:      12 ANDREW SVEEN, ESQ.      13 Nilan Johnson Lewis, P.A.      14 120 South 6th Street, Suite 400      15 Minneapolis, Minnesota 55402      16 (612) 305-7500      17 asveen@nilanjohnson.com      18 -- and --      19 JILL K. PEARSON, ESQ.      20 Cargill      21 15407 McGinty Road West, MS 24      22 Wayzata, Minnesota 55391      23 (952) 742-2296      24 jill_pearson@cargill.com</p> <p>25</p>
<p style="text-align: center;">3</p> <p>1 APPEARANCES:      2 On behalf of Sparboe Farms:      3 TROY J. HUTCHINSON, ESQ.      4 Hutchinson P.A.      5 907 East Wayzata Boulevard, Suite 330      6 Wayzata, Minnesota 55391      7 (952) 215-0141      8 thutchinson@hutchinson-legal.com</p> <p>9</p> <p>10 On behalf of Michael Foods:      11 WILLIAM L. GREENE, ESQ.      12 Stinson Leonard Street LLP      13 150 South Fifth Street, Suite 2300      14 Minneapolis, Minnesota 55402      15 (612) 335-7023      16 william.greene@leonard.com</p> <p>17</p> <p>18 On behalf of Associated Wholesale Grocers,      19 Inc., et al.:      20 BARRETT J. VAHLE, ESQ.      21 Stueve, Siegel &amp; Hanson LLP      22 460 Nichols Road, Suite 200      23 Kansas City, Missouri 64112      24 (816) 714-7100      25 vahle@stuevesiegel.com</p>	<p style="text-align: center;">5</p> <p>1 APPEARANCES: (Cont'd)      2</p> <p>3 On behalf of The Kraft Plaintiffs:      4 RICHARD P. CAMPBELL, ESQ. (via phone)      5 Jenner &amp; Block LLP      6 330 North Clark Street      7 Chicago, Illinois 60654-3456      8 (312) 840-9530      9 rcampbell@jenner.com</p> <p>10</p> <p>11 On behalf of Daybreak Foods:      12 CHRISTOPHER E. ONDECK, ESQ. (via phone)      13 ADRIAN FONTECILLA, ESQ.      14 Proskauer Rose LLP      15 1001 Pennsylvania Avenue, N.W., Suite      16 400 South      17 Washington, D.C. 20004-2533      18 (202) 416-5675      19 condeck@proskauer.com      20 afontecilla@proskauer.com</p> <p>21</p> <p>22 ALSO PRESENT:      23 DEAN HIBBEN, Videographer      24 SUSAN WHITMAN, paralegal</p> <p>25</p>

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<p style="text-align: center;">C O N T E N T S</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">WITNESS: TERRY W. PROFITT</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr><td>By Mr. Hutchinson:</td><td style="text-align: right;">10</td></tr> <tr><td>By Mr. Ondek:</td><td style="text-align: right;">28</td></tr> <tr><td>By Mr. Greene:</td><td style="text-align: right;">46</td></tr> <tr><td>By Mr. Vahle:</td><td style="text-align: right;">62</td></tr> <tr><td>By Mr. Campbell:</td><td style="text-align: right;">88</td></tr> <tr><td>By Mr. Hutchinson:</td><td style="text-align: right;">100</td></tr> <tr><td>By Mr. Ondek:</td><td style="text-align: right;">104</td></tr> <tr><td>By Mr. Vahle:</td><td style="text-align: right;">108</td></tr> </tbody> </table> <p style="text-align: center;">E X H I B I T S M A R K E D</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">LABEL/DESCRIPTION</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr><td>Cargill 1 - Supply Agreement between Cargill and Sparboe dated December 10, 2002 (26 pgs., No Bates)</td><td style="text-align: right;">14</td></tr> <tr><td>Cargill 2 - Producer Meeting dated December 6, 2005 (NL 00217575)</td><td style="text-align: right;">67</td></tr> <tr><td>Cargill 3 - UEP Marketing Committee minutes dated 10/11/06 (NUCAL-08md2002-0000465 to 0000466)</td><td style="text-align: right;">67</td></tr> </tbody> </table>	WITNESS: TERRY W. PROFITT	PAGE	By Mr. Hutchinson:	10	By Mr. Ondek:	28	By Mr. Greene:	46	By Mr. Vahle:	62	By Mr. Campbell:	88	By Mr. Hutchinson:	100	By Mr. Ondek:	104	By Mr. Vahle:	108	LABEL/DESCRIPTION	PAGE	Cargill 1 - Supply Agreement between Cargill and Sparboe dated December 10, 2002 (26 pgs., No Bates)	14	Cargill 2 - Producer Meeting dated December 6, 2005 (NL 00217575)	67	Cargill 3 - UEP Marketing Committee minutes dated 10/11/06 (NUCAL-08md2002-0000465 to 0000466)	67	<p style="text-align: center;">6</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p style="text-align: center;">(9:34 a.m.)</p> <p>THE VIDEOGRAPHER: We are on the record.</p> <p>This is the videotaped deposition of Terry W. Profitt taken on April 8th 2014. The time now is approximately 9:34 a.m.</p> <p>The deposition is being taken in the matters of In Re: Processed Egg Products Antitrust Litigation in the United States District Court for the Eastern District of Pennsylvania, MDL Number 200208-MD-02002.</p> <p>And also Associated Wholesale Groceries, Incorporated, et al., versus United Egg Producers, et al., in the District Court of Wyandotte County Kansas, 29th Judicial District, Case Number 10-CV-2171.</p> <p>The deposition is taking place in Minneapolis, Minnesota. My name is Dean Hibben. I am the videographer representing Henderson Legal Services. Will counsel please identify themselves for the record.</p> <p>MR. HUTCHINSON: Troy Hutchinson on behalf of Sparboe Farms.</p> <p>MR. GREENE: William Greene on behalf of Michael Foods.</p> <p style="text-align: center;">7</p> <p style="text-align: center;">E X H I B I T S M A R K E D</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">LABEL/DESCRIPTION</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr><td>Cargill 4 - UEP Marketing Committee minutes dated 10/15/08 (UE 0917413 to 0917415)</td><td style="text-align: right;">67</td></tr> <tr><td>Cargill 5 - Memo from Garth Sparboe (UE 0331921 to 0331933)</td><td style="text-align: right;">67</td></tr> <tr><td>Cargill 6 - Letter from Norm Stocker (UE 0234602)</td><td style="text-align: right;">67</td></tr> </tbody> </table>	LABEL/DESCRIPTION	PAGE	Cargill 4 - UEP Marketing Committee minutes dated 10/15/08 (UE 0917413 to 0917415)	67	Cargill 5 - Memo from Garth Sparboe (UE 0331921 to 0331933)	67	Cargill 6 - Letter from Norm Stocker (UE 0234602)	67	<p style="text-align: center;">9</p> <p>MR. VAHLE: Barrett Vahle from Stueve Siegel Hanson in Kansas City on behalf of the plaintiffs in the Kansas litigation.</p> <p>MR. HEDLUND: Dan Hedlund, Gustafson Gluek, on behalf of the Direct Purchaser Plaintiffs.</p> <p>MR. SVEEN: Andy Sveen on behalf of Cargill.</p> <p>THE VIDEOGRAPHER: Those on the phone, please.</p> <p>MR. CAMPBELL: Richard Campbell of Jenner &amp; Block on behalf of the Kraft plaintiffs: Kraft, Nestle, Kellogg and General Foods.</p> <p>MR. ONDECK: And you have Chris Ondek, last name is spelled O-n-d-e-c-k, of the law firm Proskauer Rose, P-R-O-S-K-A-U-E-R, Rose on behalf of the defendant Daybreak Foods.</p> <p>THE VIDEOGRAPHER: And would the court reporter please swear in the witness.</p> <p style="text-align: center;">* * * * *</p> <p>Whereupon,</p> <p>TERRY W. PROFITT, called as a Witness, was duly sworn by Jonathan Wonnell, a Notary Public in and for the State of Minnesota, and was</p>
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<p style="text-align: center;">10</p> <p>examined and testified as follows.</p> <p style="text-align: center;">* * * * *</p> <p><b>EXAMINATION BY COUNSEL FOR SPARBOE FARMS</b> <b>BY MR. HUTCHINSON:</b></p> <p>Q. Good morning, Mr. Profitt. I'm Troy Hutchinson. I represent Sparboe Farms.</p> <p><b>A. Okay.</b></p> <p>Q. I'm going to be asking you some questions this morning. Just a couple things to keep in mind before we get started is to let finish asking my question before you start responding so we avoid talking over each other.</p> <p>And the other thing is to remember to answer audibly rather than nodding your head or shaking your head so the court reporter can get a good record.</p> <p>Mr. Profitt, where are you currently employed?</p> <p><b>A. Cargill Kitchen Solutions in Monticello, Minnesota.</b></p> <p>Q. And how long have you been employed at Cargill Kitchen Solutions?</p> <p><b>A. Since the 1980. Or with Cargill.</b></p> <p>Q. With Cargill since 1980?</p> <p><b>A. Correct.</b></p>	<p style="text-align: center;">12</p> <p><b>A. No. We do not own laying hens.</b></p> <p>Q. And so Cargill Kitchen Solutions purchases both the liquid egg and shell eggs from suppliers?</p> <p><b>A. That is correct.</b></p> <p>Q. And who -- since you've started at Cargill Kitchen Solutions, who have been Cargill Kitchen Solutions' primary egg suppliers?</p> <p><b>A. Primary would be Daybreak Foods, Herbruck's and at one point Sparboe Farms.</b></p> <p>Q. And you would -- Cargill Kitchen Solutions would purchase both shell eggs and liquid egg from those three suppliers?</p> <p><b>A. Today we do. Except Sparboe Farms, when I say today.</b></p> <p>Q. Well, Cargill Kitchen Solutions currently purchases liquid egg from Sparboe, correct?</p> <p><b>A. On a spot basis.</b></p> <p>Q. And can you remember when and what year Cargill Kitchen Solutions began purchasing eggs from Daybreak?</p> <p><b>A. I can't remember -- recollect the exact date. I know since 1980. Excuse me. Since 1995. Prior to that, I do not recollect or do not know.</b></p>
<p style="text-align: center;">11</p> <p>Q. And when did you join Cargill Kitchen Solutions?</p> <p><b>A. 2000 -- excuse me. 1995.</b></p> <p>Q. And what is your current title?</p> <p><b>A. Vice president and director of manufacturing.</b></p> <p>Q. And how long have you held that title?</p> <p><b>A. Since 2004.</b></p> <p>Q. And prior to 2004, what was your title?</p> <p><b>A. I was complex manager at our Lake Odessa, Michigan facility from 1995 to 2004.</b></p> <p>Q. And what does Cargill Kitchen Solutions do?</p> <p><b>A. We're a seller and producer, processor, of further processed eggs.</b></p> <p>Q. And could you explain just for the record what further processed eggs are?</p> <p><b>A. These are eggs outside of the shell primarily, so we're selling eggs that are either broken in liquid, frozen, cooked type products versus what you would generally think of as a shell egg. We sell a percentage of shell eggs, but primarily in the further processed egg category.</b></p> <p>Q. And does Cargill Kitchen Solutions have its own laying hens?</p>	<p style="text-align: center;">13</p> <p>Q. So at least as early as 1995?</p> <p><b>A. To my recollection, correct.</b></p> <p>Q. And do you remember roughly when Cargill Kitchen Solutions began purchasing eggs from Sparboe Farms?</p> <p><b>A. Again, I can't remember. I can't recollect when we started buying specific eggs from Sparboe.</b></p> <p>Q. Would it have been prior to 2003?</p> <p><b>A. I would believe so, yes.</b></p> <p>Q. And did Cargill Kitchen Solutions, for the period of time that it was buying eggs from Sparboe Farms, have a long-term written contract with Sparboe Farms?</p> <p><b>A. Could you repeat the question?</b></p> <p>Q. Sure. Did Cargill Kitchen Solutions have a long-term written contract for the purchase of eggs from Sparboe Farms?</p> <p><b>A. Not to my knowledge prior to 2002. I just -- I don't know.</b></p> <p>Q. But starting in 2002, there was a written contract entered into?</p> <p><b>A. We did have a written contract on the Vincent facility in Vincent, Iowa.</b></p> <p>Q. And could you explain to me and for the</p>

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<p>14</p> <p>1 record how pricing was determined under that 2 contract that was entered into in 2002?</p> <p>3     <b>A. I cannot recollect the exact nature of 4         the pricing of that contract.</b></p> <p>5     Q. Was it set off of any kind of -- was 6         pricing set off of any kind of index?</p> <p>7     <b>A. Are you talking about a specific 8         contract?</b></p> <p>9     Q. Well, the Sparboe contract with Cargill 10      Kitchen Solutions.</p> <p>11     <b>A. On which -- on the Vincent facility?</b></p> <p>12     Q. Well, you know what, it might be helpful 13      to have you refer to that contract. So I will -- 14      can we mark this as Cargill Exhibit 1, please.</p> <p>15             (Cargill Exhibit 1 was marked for 16             identification.)</p> <p>17     BY MR. HUTCHINSON:</p> <p>18     Q. Mr. Profitt, I've handed you what's been 19      marked as Cargill Exhibit 1. Take some time to 20      take a look at the exhibit.</p> <p>21     MR. VAHLE: Mr. Hutchinson, has this 22      been produced in the Kansas litigation?</p> <p>23     MR. HUTCHINSON: I believe it has.</p> <p>24     MR. VAHLE: I'm just seeing that there's 25      no Bates numbers.</p>	<p>16</p> <p>1     BY MR. HUTCHINSON: 2     Q. And this contract covers how pricing 3         would be calculated, correct? 4             MR. VAHLE: Same objections.</p> <p>5     <b>A. You know, I am not involved, and did not 6         get involved directly in the pricing of this 7         contract.</b></p> <p>8     BY MR. HUTCHINSON: 9     Q. In the negotiation of the contract? 10     <b>A. In the pricing of the contract, I was 11         not involved directly with that part of the 12         contract.</b></p> <p>13     Q. But you understand how pricing worked at 14      Cargill Kitchen Solutions, right?</p> <p>15     <b>A. I have knowledge of how the pricing 16         works, yes.</b></p> <p>17     Q. And was pricing determined -- the 18      pricing that Cargill charged to Sparboe Farms, how 19      was that price for eggs determined generally?</p> <p>20     <b>A. Generally, it is a grain-based pricing 21         program.</b></p> <p>22     Q. And when you say grain-based, what 23      specifically -- what went into determining what the 24      grain price was?</p> <p>25     <b>A. Again, I did not directly be involved in</b></p>
<p>15</p> <p>1     <b>A. The copy I'm looking at is not a signed 2         copy by Cargill. It's only signed by Beth Schnell.</b></p> <p>3     BY MR. HUTCHINSON: 4     Q. Well, if you take a look at page 9, I 5      think that page is signed by --</p> <p>6     <b>A. Okay.</b></p> <p>7     Q. -- somebody from Cargill. Do you 8      recognize that signature?</p> <p>9     <b>A. Yes.</b></p> <p>10     Q. Whose signature is that?</p> <p>11     <b>A. From Cargill?</b></p> <p>12     Q. Yes.</p> <p>13     <b>A. Lee Skold.</b></p> <p>14     Q. And who is Lee Skold?</p> <p>15     <b>A. At the time -- he's retired now. At the 16         time, he was senior vice president for Cargill.</b></p> <p>17     Q. And is this the agreement that Cargill 18      Kitchen Solutions entered into in 2002 with Sparboe 19      Farms?</p> <p>20     MR. VAHLE: Objection, lacks foundation, 21      calls for speculation.</p> <p>22     MR. SVEEN: Go ahead and answer, if you 23      can.</p> <p>24     <b>A. So this is the contract for the Vincent 25         facility with Sparboe Farms.</b></p>	<p>17</p> <p>1     <b>that pricing. The two grains that are involved 2         primarily are soybean and corn.</b></p> <p>3     Q. But you would know in your position at 4      Cargill that that's how Cargill set prices for 5      Sparboe, correct?</p> <p>6     <b>A. For grain-based pricing, that is how it 7         is put together.</b></p> <p>8     Q. And generally you know from your 9      position at Cargill that the grain-based pricing is 10     determined based on published grain prices, 11      correct?</p> <p>12     MR. VAHLE: Objection, lacks foundation, 13      calls for speculation based on this witness' 14      testimony.</p> <p>15     MR. SVEEN: Go ahead.</p> <p>16     <b>A. Again, I'm not directly involved in the 17         pricing mechanism of the contract.</b></p> <p>18     BY MR. HUTCHINSON: 19     Q. But you understand how the pricing 20      works, correct?</p> <p>21     <b>A. I have a general knowledge --</b></p> <p>22     MR. VAHLE: Hold on. Objection. Lacks 23      foundation, calls for speculation. Sorry to 24      interrupt you, sir.</p> <p>25     <b>A. I have a general knowledge of how the</b></p>

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<p style="text-align: center;">18</p> <p><b>pricing mechanism works.</b></p> <p>BY MR. HUTCHINSON:</p> <p>Q. And the pricing for the grain is based on the Chicago Board of Trade published grain prices, correct?</p> <p>MR. VAHLE: Same objections.</p> <p><b>A. I have a general knowledge of how the pricing is set.</b></p> <p>BY MR. HUTCHINSON:</p> <p>Q. And why don't you explain that general knowledge to me, if you could.</p> <p><b>A. As I've stated, I know it is based on two grains primarily, soybean and corn.</b></p> <p>Q. And how do you know that?</p> <p><b>A. Because of my general knowledge of being involved in the business.</b></p> <p>Q. And do you know how -- what does Cargill look at to determine what the price of corn and soybeans would be?</p> <p>MR. VAHLE: Objection, calls for speculation.</p> <p><b>A. Again, I am not involved in that portion of the pricing mechanism.</b></p> <p>BY MR. HUTCHINSON:</p> <p>Q. Okay. Do you know how the price for</p>	<p style="text-align: center;">20</p> <p>at that Vincent facility?</p> <p><b>A. Yes, we did.</b></p> <p>Q. And to the best of your knowledge, can you tell me generally what those requirements are?</p> <p><b>A. Those requirements were based on a specific customer's requirements that we supply. And we presented those to Sparboe to follow those guidelines and those requirements.</b></p> <p>Q. And who was the customer that you're referring to?</p> <p><b>A. We're talking specifically the Vincent location?</b></p> <p>Q. Correct.</p> <p><b>A. Those requirements were set forth with us and McDonald's.</b></p> <p>Q. And so McDonald's insisted that Cargill's suppliers satisfy those animal management practices, correct?</p> <p>MR. VAHLE: Objection to the form.</p> <p><b>A. That is correct.</b></p> <p>BY MR. HUTCHINSON:</p> <p>Q. If you could take a look at page 19 of the Cargill contract.</p> <p><b>A. Okay.</b></p> <p>Q. You referenced that certain animal</p>
<p style="text-align: center;">19</p> <p>corn or soybeans is determined?</p> <p><b>A. I have a general knowledge of how that is done.</b></p> <p>Q. And what is the general knowledge?</p> <p><b>A. That it is priced based upon the primary ingredients of soybean and corn.</b></p> <p>Q. And why does Cargill purchase eggs?</p> <p><b>A. To deliver finished further processed egg products to our customers.</b></p> <p>Q. And did Cargill require that its egg suppliers adopt and maintain certain animal management practices?</p> <p>MR. SVEEN: Objection, vague. To the extent you can answer, go ahead.</p> <p><b>A. We have specifications and requirements specific to certain customers that we do have requirements on.</b></p> <p>BY MR. HUTCHINSON:</p> <p>Q. So let's -- in the instance of Sparboe Farms, Cargill purchased eggs from Sparboe that were produced at Sparboe's Vincent facility, correct?</p> <p><b>A. That is correct.</b></p> <p>Q. And did Cargill require that Sparboe have certain animal management practices at place</p>	<p style="text-align: center;">21</p> <p>management practices were presented to Sparboe and that Cargill required those management practices. Are the guidelines that are set forth in Exhibit D some of those requirements?</p> <p>MR. VAHLE: Objection, lacks foundation, vague and ambiguous.</p> <p><b>A. Yes. That is correct.</b></p> <p>BY MR. HUTCHINSON:</p> <p>Q. And if you could flip to page 20, the next page. At the top, it says "Cages." Do you see that?</p> <p><b>A. Yes.</b></p> <p>Q. And do you see where it says, "McDonald's requires for each bird housed a minimum of 72 square inches of capable space and a minimum of 4 inches of cage front feeder space"? Did I read that correctly?</p> <p><b>A. Correct.</b></p> <p>Q. So Cargill required that Sparboe, at that Vincent facility, have at least 72 square inches of cage space per laying hen, correct?</p> <p>MR. VAHLE: Objection, lacks foundation.</p> <p><b>A. Yes. Correct.</b></p> <p>BY MR. HUTCHINSON:</p> <p>Q. And in your job duties at Cargill -- you</p>

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<p style="text-align: center;">22</p> <p>know, and let's focus on 2002 when this agreement was entered into -- did your job duties involve in any way -- well, what were your job duties in 2002?</p> <p><b>A. In 2002, as I stated, I was complex manager of our Lake Odessa, Michigan facility.</b></p> <p>Q. And would that facility -- would shell eggs and liquid eggs be brought into that facility?</p> <p><b>A. No, they would not.</b></p> <p>Q. And what did that facility do?</p> <p><b>A. That facility was strictly a liquid further processed egg facility.</b></p> <p>Q. So just liquid eggs would be brought to that facility?</p> <p><b>A. To that facility. That is correct.</b></p> <p>Q. And those eggs would come from -- in 2002 from Daybreak or Sparboe?</p> <p><b>A. Or other various suppliers.</b></p> <p>Q. And so your job was to manage the entire facility, correct?</p> <p><b>A. That is correct.</b></p> <p>Q. So did people involved in the egg procurement -- were those people reporting to you?</p> <p><b>A. No, they were not.</b></p> <p>Q. Who did they report to?</p> <p><b>A. The procurement department or -- they</b></p>	<p style="text-align: center;">24</p> <p>1      A. That these requirements would increase 2      the space that each bird had, which would in turn 3      create a -- more investment to cover the space that 4      was required for these birds. 5      Q. So it would result in the producers' 6      cost of production to increase, correct? 7      A. That is correct. 8      Q. And did you understand that Sparboe, for 9      example, in order to comply with these animal 10     welfare requirements from Cargill and McDonald's 11     that they would charge Cargill more for eggs? 12     A. Yes. I was aware of that. 13     Q. And you would have been aware of that 14     back in 2002, correct? 15     A. I was aware of it in 2002. 16     Q. And why would Cargill agree to pay more 17     for eggs? 18     MR. VAHLE: Objection, calls for 19     speculation. 20     MR. SVEEN: You can answer if you know. 21     A. Because we did realize that the 22     specifications and requirements we were placing on 23     that supplier would be an increase in investment 24     that they would have to make which constituted an 25     increase in the pricing structure.</p>
<p style="text-align: center;">23</p> <p>1      reported in to -- ultimately in to the president of 2      the company. 3      Q. And so what were your specific job 4      duties and responsibilities?</p> <p><b>A. To run the complex at Lake Odessa to the 6      produce wholesome food safe products to supply our 7      customers.</b></p> <p>Q. And did you interface with your customers?</p> <p><b>A. Yes.</b></p> <p>Q. And you -- McDonald's, for example. Would McDonald's -- would you sit down with McDonald's prior to selling them eggs?</p> <p><b>A. I have had interaction with McDonald's.</b></p> <p>Q. And they asked you and Cargill to supply them with eggs that met certain animal welfare requirements, correct?</p> <p><b>A. That is correct.</b></p> <p>Q. And did you understand that having animal welfare requirements would have an impact on the cost of those eggs?</p> <p><b>A. Yes.</b></p> <p>Q. And what was your understanding of the impact that animal welfare requirements would have on egg costs?</p>	<p style="text-align: center;">25</p> <p>1      BY MR. HUTCHINSON: 2      Q. And did -- did you believe that these -- 3      the compliance with these animal welfare practices, 4      would it add value to that product that Cargill was 5      buying from Sparboe? 6      MR. VAHLE: Objection, vague and 7      ambiguous. 8      A. These requirements added value to meet 9      the specifications of the customers we supplied. 10     BY MR. HUTCHINSON: 11     Q. So ultimately that was something 12     McDonald's had asked for, and Cargill and Sparboe 13     were complying with McDonald's request, correct? 14     A. That is correct. 15     Q. At some point, did you communicate to 16     individuals at Sparboe that you believed that there 17     were benefits to membership in the United Egg 18     Producers? 19     MR. VAHLE: Objection, lacks foundation. 20     A. Specifically? 21     BY MR. HUTCHINSON: 22     Q. Well, generally. 23     A. So can you restate the question? 24     Q. Sure. You interacted with individuals 25     at Sparboe with some frequency between the years</p>

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<p style="text-align: right;">26</p> <p>1       2002 to present, correct?</p> <p>2       <b>A. Correct.</b></p> <p>3       Q. And who would those individuals at</p> <p>4       Sparboe be?</p> <p>5       <b>A. They're various ones. I guess Bob</b>  <b>Sparboe, Robert Sparboe, before he passed away.</b>  <b>Beth Schnell, or Sparboe-Schnell. I guess I can't</b>  <b>remember the guy's name now. He's left the</b>  <b>company. But various leaders within the Sparboe</b>  <b>group. But those are the two -- those are the two</b>  <b>senior leaders in the Sparboe group. Robert</b>  <b>Sparboe, before he passed away, and Beth</b>  <b>Sparboe-Schnell.</b></p> <p>6       Q. And you also interacted with an</p> <p>7       individual named Wayne Carlson, correct?</p> <p>8       <b>A. Correct.</b></p> <p>9       Q. And he was an employee of Sparboe,</p> <p>10      right?</p> <p>11      <b>A. Yes.</b></p> <p>12      Q. At some point between 2002 and present,</p> <p>13      did you have an understanding that Sparboe was not</p> <p>14      a member of UEP, the United Egg Producers, and not</p> <p>15      really aligned with UEP?</p> <p>16      <b>A. I became aware that they were not a</b>  <b>member of UEP.</b></p>	<p style="text-align: right;">28</p> <p>1       questions. Thank you, Mr. Profitt.</p> <p>2       Anyone else have questions?</p> <p>3       MR. ONDECK: Yeah. It's Chris Ondeck</p> <p>4       for Daybreak Foods. I'd like to follow up with</p> <p>5       questions specifically with regard to the Daybreak.</p> <p>6       MR. HUTCHINSON: Go ahead, Chris.</p> <p>7       MR. ONDECK: Okay. Mr. Profitt, good</p> <p>8       morning. Can you hear me well on the phone?</p> <p>9       THE WITNESS: Yes, I can.</p> <p>10      MR. ONDECK: Okay. Thank you. And I</p> <p>11      can hear you very well.</p> <p>12      MR. SVEEN: Chris, can you hold on for</p> <p>13      just one second? Hold on for one second. Okay?</p> <p>14      Chris, are you there now?</p> <p>15      MR. ONDECK: Yes.</p> <p>16      MR. SVEEN: Okay. Go ahead.</p> <p>17      EXAMINATION BY COUNSEL FOR DAYBREAK FOODS</p> <p>18      BY MR. ONDECK:</p> <p>19      Q. And, Mr. Profitt, as I mentioned, my</p> <p>20      name is Chris Ondeck. I'm with a law firm named</p> <p>21      Proskauer Rose and I'm representing Daybreak Foods</p> <p>22      in the cases in which this deposition is being</p> <p>23      taken.</p> <p>24      I'm going to ask you questions that are</p> <p>25      similar in many respects to the questions that</p>
<p style="text-align: right;">27</p> <p>1       Q. And do you remember roughly when that</p> <p>2       was?</p> <p>3       <b>A. I can't recollect the exact time or</b>  <b>year.</b></p> <p>4       Q. Would it have been prior to 2008, do you</p> <p>5       think?</p> <p>6       <b>A. I can't recollect, again, exactly what</b>  <b>time that would be.</b></p> <p>7       Q. And when you discovered that Sparboe was</p> <p>8       not a member of UEP, in your mind, did you think it</p> <p>9       would have been beneficial for Sparboe to align</p> <p>10      itself with United Egg Producers?</p> <p>11      MR. VAHLE: Objection to the form.</p> <p>12      MR. SVEEN: I'll say the same objection.</p> <p>13      Go ahead, if you can answer.</p> <p>14      <b>A. As a personal relationship with Robert</b>  <b>Sparboe, I felt it was -- I felt personally that I</b>  <b>should suggest to Beth Sparboe-Schnell that</b>  <b>membership with the UEP would be something that she</b>  <b>could possibly draw benefit from going forward.</b></p> <p>15      BY MR. HUTCHINSON:</p> <p>16      Q. And you expressed your personal views</p> <p>17      with Ms. Schnell of Sparboe, correct?</p> <p>18      <b>A. That is correct.</b></p> <p>19      MR. HUTCHINSON: I have no further</p>	<p style="text-align: right;">29</p> <p>1       Mr. Hutchinson asked you, but each of my questions</p> <p>2       will be with reference to Daybreak Foods. Does</p> <p>3       that make sense?</p> <p>4       <b>A. Yes.</b></p> <p>5       Q. And so my first question is, are you</p> <p>6       familiar with Daybreak Foods?</p> <p>7       <b>A. Yes.</b></p> <p>8       Q. And are they a supplier to Cargill</p> <p>9       Kitchen Solutions?</p> <p>10      <b>A. Yes, they are.</b></p> <p>11      Q. And what do they -- what products do</p> <p>12      they supply to Cargill Kitchen Solutions?</p> <p>13      <b>A. They supply liquid egg products and, in</b>  <b>addition, shell egg products or shell eggs.</b></p> <p>14      Q. And -- I'm sorry for speaking over you.</p> <p>15      Is a majority of the product that Daybreak supplies</p> <p>16      either one or the other of those two that you just</p> <p>17      mentioned, liquid egg or shell egg?</p> <p>18      <b>A. There's a much higher percentage of</b>  <b>liquid eggs than shell eggs.</b></p> <p>19      Q. And to -- are you familiar with the</p> <p>20      Cargill Kitchen Solutions facilities that receive</p> <p>21      those products from Daybreak?</p> <p>22      <b>A. Yes, I am.</b></p> <p>23      Q. And so now I'm going to ask you about</p>

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<p style="text-align: center;">30</p> <p>1 the time period from 1999 to the present. From      2 1999 to the present, which Cargill Kitchen      3 Solutions facilities were supplied with product      4 from Daybreak?</p> <p>5     <b>A. Lake Odessa, Michigan; Monticello,</b>      6 <b>Minnesota; Mason City, Iowa. I cannot tell you</b>      7 <b>absolutely for sure if Big Lake, Minnesota. I</b>      8 <b>think there may be some.</b></p> <p>9     Q. Okay.</p> <p>10    <b>A. Those are the primary --</b></p> <p>11    Q. Go ahead, sir.</p> <p>12    <b>A. Those are the primary locations.</b></p> <p>13    Q. Just to confirm, I heard you mention      14 facilities in the states of Michigan, Iowa and      15 Minnesota as far as you recollect at this time; is      16 that correct?</p> <p>17    <b>A. That is correct.</b></p> <p>18    Q. And just to confirm, none of those      19 facilities is in the state of Kansas; is that      20 correct?</p> <p>21    <b>A. That is correct.</b></p> <p>22    Q. And as far as you know, did Daybreak      23 ever supply Cargill Kitchen Solutions with product      24 that was delivered into the state of Kansas?</p> <p>25    <b>A. Not to my knowledge.</b></p>	<p style="text-align: center;">32</p> <p>1     <b>A. No, they do not.</b></p> <p>2         BY MR. ONDECK:</p> <p>3         Q. Okay. Thank you. Just one or two more      4 questions on this topic. All right. With regard      5 to Kansas, again, are you familiar with any      6 meetings that -- or other business activities that      7 Daybreak would have conducted with Cargill Kitchen      8 Solutions in the state of Kansas from 1999 to the      9 present?</p> <p>10         <b>A. I'm not familiar with any meetings that</b>      11 <b>may have taken place with Daybreak or Cargill in</b>      12 <b>the state of Kansas.</b></p> <p>13         Q. And you're not aware of any that      14 occurred; is that correct?</p> <p>15         <b>A. I'm not aware of any.</b></p> <p>16         Q. Thank you. Now I'm going to turn to      17 some of the same questions that Mr. Hutchinson      18 asked with regard to the pricing for product that      19 Cargill Kitchen Solutions paid. These questions      20 will be with regard to Daybreak.</p> <p>21         Similar to what you were discussing with      22 Mr. Hutchinson, is it correct that Cargill Kitchen      23 Solutions purchased product from Daybreak primarily      24 using a grain-based pricing contract?</p> <p>25         <b>A. That is my general knowledge of the</b></p>
<p style="text-align: center;">31</p> <p>1     Q. And by that question, I should clarify.      2 That was delivered by Daybreak to Cargill for      3 delivery in the state of Kansas.</p> <p>4     <b>A. Not to my knowledge. Not to my</b>      5 <b>knowledge, any deliveries to Cargill in the state</b>      6 <b>of Kansas.</b></p> <p>7     Q. Thank you very much. And also with      8 regard to this -- the locations where products are      9 delivered, does Daybreak control where Cargill      10 Kitchen Solutions -- once it's received product      11 from Daybreak, where Cargill Kitchen Solutions then      12 decides to sell that product --</p> <p>13         MR. VAHLE: Objection.</p> <p>14         BY MR. ONDECK</p> <p>15         Q. -- downstream in the chain of commerce?</p> <p>16         MR. VAHLE: Objection to the form.</p> <p>17     <b>A. Can you repeat the question?</b></p> <p>18         <b>BY MR. ONDECK</b></p> <p>19         Q. Sure. Actually, let me withdraw that      20 question. Let me break that up.</p> <p>21         The question is, does Daybreak in any      22 way control the places to where Cargill Kitchen      23 Solutions sells its Cargill Kitchen Solutions      24 products?</p> <p>25         MR. VAHLE: Same objection.</p>	<p style="text-align: center;">33</p> <p>1         <b>pricing mechanism for Cargill Kitchen Solutions</b>      2 <b>with Daybreak Foods.</b></p> <p>3         Q. And, actually, just to get on the record      4 the length of time that you've had any contact with      5 Daybreak, have you been involved or aware of the      6 relationship that Cargill Kitchen Solutions had      7 with Daybreak as its supplier as part of your      8 duties at the company?</p> <p>9         <b>A. Yes. I was -- I am aware of the</b>      10 <b>relationship.</b></p> <p>11         Q. Have you yourself interacted with any of      12 the personnel at Daybreak?</p> <p>13         <b>A. Yes. I interact with the personnel of</b>      14 <b>Daybreak Foods.</b></p> <p>15         Q. And who would be your primary contact      16 there?</p> <p>17         <b>A. I interact with the CEO, William Rehm.</b></p> <p>18         Q. And as part of that interaction, you're      19 generally familiar with the product and the pricing      20 mechanism used for Cargill Kitchen Solutions'      21 purchases of product from Daybreak?</p> <p>22         <b>A. I'm generally knowledgeable of that --</b>      23 <b>of those.</b></p> <p>24         Q. Thank you. And with reference to the      25 grain-based pricing contract used by Cargill</p>

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<p style="text-align: right;">34</p> <p>1 Kitchen Solutions to purchase product from 2 Daybreak, is it correct that it is based primarily 3 on two grains, soybean and corn? 4 MR. VAHLE: Objection, lacks foundation. 5 You can answer.</p> <p><b>A. That is my general knowledge of how the pricing mechanism works.</b></p> <p><b>BY MR. ONDECK</b></p> <p>Q. And the -- strike that. Is it correct that Cargill Kitchen Solutions used a written supply agreement to purchase product from Daybreak?</p> <p><b>A. That is correct, to my general knowledge.</b></p> <p>Q. And in those supply agreements, did Cargill Kitchen Solutions require the product to comply with various specifications that Cargill Kitchen Solutions set forth?</p> <p>MR. VAHLE: Objection, lacks foundation, calls for speculation.</p> <p><b>A. Yes. There are customer-specific requirements in those contracts.</b></p> <p><b>BY MR. ONDECK:</b></p> <p>Q. Thank you. And is -- was one of those specifications a maximum temperature requirement</p>	<p style="text-align: right;">36</p> <p>1 Let me turn to a specific question. Are you familiar that Cargill Kitchen Solutions is supplied by product from a facility of Daybreak's in Graettinger, Iowa?</p> <p><b>A. Yes, I am aware of that.</b></p> <p>Q. And is it correct that the product that Daybreak supplies from Graettinger, Iowa has to supply with Cargill Kitchen Solutions' requirements for its customer, McDonald's?</p> <p><b>A. Yes, I am aware of that.</b></p> <p>Q. And now I'm going to ask you about cage space requirements for that McDonald's contract. With regard to cage space requirements, does Cargill Kitchen Solutions require Daybreak to provide 72 square inches' cage space per laying hen in its Graettinger facility in order to supply product to Cargill Kitchen Solutions for use with McDonald's?</p> <p><b>A. That is correct.</b></p> <p>Q. Thank you. And now I'm going to turn to the other facilities that Daybreak supplies Cargill Kitchen Solutions with product from. And there are four of them. And I'm going to say their names and ask you a specific question about each one.</p> <p>The first of these four facilities that</p>
<p style="text-align: right;">35</p> <p>1 for product? 2 MR. VAHLE: Same objection.</p> <p><b>A. That is correct. There is a temperature requirement in the contract of product being received. I assume that's what you mean with "temperature."</b></p> <p><b>BY MR. ONDECK:</b></p> <p>Q. I do.</p> <p><b>A. Okay.</b></p> <p>Q. Thank you. And was another of the specifications in that product a requirement regarding pH levels of the products?</p> <p><b>A. To my knowledge, that is correct.</b></p> <p>Q. Thank you. And then last, was another one of those requirements a requirement as to the cage space specifications for egg-laying hens?</p> <p><b>A. That is specific to a customer. So I'm not sure exactly what your question is -- is it a general question or is it specific?</b></p> <p>Q. It's general, and then I'm going to follow with specific.</p> <p><b>A. Okay. Okay. Go ahead.</b></p> <p>Q. And I apologize. I know we're on the phone, and I don't want to speak over you. So whenever you're going to speak, I'll stop.</p>	<p style="text-align: right;">37</p> <p>1 I want to ask you about is Daybreak's Lake Mills complex facility in Wisconsin. And are you generally familiar that Daybreak supplies Cargill Kitchen Solutions with product from the Lake Mills facility?</p> <p><b>A. Generally knowledgeable.</b></p> <p>Q. And is it correct that for that facility, which is a facility that supplies Cargill Kitchen Solutions with product that I believe is not used for the McDonald's contract, is it correct that Cargill Kitchen Solutions requires Daybreak to allocate 67 square inches of cage space per hen at that facility?</p> <p>MR. VAHLE: Objection to the form, lacks foundation.</p> <p><b>A. I am not aware of the specific requirements for that location of Daybreak Foods.</b></p> <p><b>BY MR. ONDECK:</b></p> <p>Q. Okay. And are you familiar with the facility that Daybreak supplies product to Cargill Kitchen Solutions generally?</p> <p><b>A. Generally I'm aware of the locations of those facilities.</b></p> <p>Q. And if I were to represent to you that in addition to the Graettinger facility, there are</p>

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<p style="text-align: center;">38</p> <p>1 four other facilities that Daybreak supplies      2 Cargill Kitchen Solutions with product, namely the      3 Lake Mills facility in Wisconsin, the Creekwood      4 facility in Wisconsin, the Mad River facility in      5 Ohio and the Long Prairie facility in Minnesota,      6 would you have any reason to disagree that those      7 are the four facilities in addition to Graettinger      8 that supply Cargill Kitchen Solutions with product?</p> <p>9 MR. VAHLE: Objection, lacks foundation,      10 compound.</p> <p>11 <b>A. I have recollection that those are the</b>      12 <b>facilities that do supply Cargill Kitchen Solutions</b>      13 <b>with product.</b></p> <p>14 BY MR. ONDECK:</p> <p>15 Q. Thank you. And for those facilities,      16 Daybreak supplies Cargill Kitchen Solutions      17 pursuant to a written agreement similar to what's      18 used for the supplies from the Graettinger      19 facility; is that right?</p> <p>20 MR. VAHLE: Objection, lacks foundation.</p> <p>21 <b>A. To my understanding.</b></p> <p>22 BY MR. ONDECK:</p> <p>23 Q. And there's one difference in particular      24 for the agreement for those four facilities that I      25 want to ask you about. Is that okay?</p>	<p style="text-align: center;">40</p> <p>1 the statement that Cargill Kitchen Solutions      2 requires Daybreak to provide 67 square inches per      3 caged hen at those four facilities?</p> <p>4 MR. VAHLE: Same objections.</p> <p>5 <b>A. I have no reason to agree or disagree.</b></p> <p>6 <b>I have no knowledge of what the requirements are</b>      7 <b>for those facilities.</b></p> <p>8 BY MR. ONDECK:</p> <p>9 Q. Okay. Do you know who a person in      10 Cargill Kitchen Solutions would be who would have      11 that knowledge?</p> <p>12 <b>A. That would reside in our procurement</b>      13 <b>department.</b></p> <p>14 Q. And is one of the personnel in the      15 procurement department a gentleman named Norm      16 Stocker, S-t-o-c-k-e-r?</p> <p>17 <b>A. That is correct.</b></p> <p>18 Q. And is he a person that your      19 understanding would be has knowledge with regard to      20 the question I'm asking you, cage space      21 requirements for a contract with Daybreak?</p> <p>22 <b>A. That is correct.</b></p> <p>23 Q. Thank you. Let me -- I'm just going to      24 look through my list, and I think we've handled      25 perhaps all the questions. So if I could ask for</p>
<p style="text-align: center;">39</p> <p>1 <b>A. Yeah. That's okay.</b></p> <p>2 Q. And I apologize. I'm just on the phone.      3 I want to try to be clear in what I'm asking you.      4 So thank you for bearing with me.</p> <p>5 For those four facilities, is it      6 correct, to your understanding, that Cargill      7 Kitchen Solutions, as one of the specifications,      8 requires Daybreak to provide 67 square inches per      9 caged hen at those facilities?</p> <p>10 MR. VAHLE: Objection, lacks foundation,      11 calls for speculation.</p> <p>12 <b>A. I am not aware of the requirements that</b>      13 <b>procurement would place on Daybreak Foods as it</b>      14 <b>relates to those facilities.</b></p> <p>15 BY MR. ONDECK:</p> <p>16 Q. Do you have any reason to disagree with      17 the statement that Cargill Kitchen Solutions      18 requires Daybreak to provide 67 square inches per      19 caged hen at those facilities?</p> <p>20 MR. VAHLE: Objection, lacks foundation,      21 calls for speculation based on his previous      22 testimony.</p> <p>23 <b>A. Could you restate the question?</b></p> <p>24 BY MR. ONDECK:</p> <p>25 Q. Do you have any reason to disagree with</p>	<p style="text-align: center;">41</p> <p>1 one minute and -- to go through it and I'll see if      2 I have any further questions.</p> <p>3 Well, I have just a few further      4 questions. We discussed earlier customer      5 requirements of Cargill Kitchen Solutions' customer      6 McDonald's, and in particular the requirement for      7 72 square inches' cage space per laying hen. Do      8 you recall that?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And I'm going to ask you a question that      11 was similar to what Mr. Hutchinson asked you with      12 regard to the Sparboe, but this is in regard to      13 Daybreak. And my question is, are you aware that      14 by requiring a larger amount of square inches of      15 cage space per laying hen that this created      16 additional cost for the producers of the product?</p> <p>17 MR. VAHLE: Objection to the form, calls      18 for speculation.</p> <p>19 <b>A. Yes. I am aware of the requirements and</b>      20 <b>the cost implications of those requirements.</b></p> <p>21 BY MR. ONDECK:</p> <p>22 Q. Thank you. And did you understand that      23 to comply with those requirements, for any      24 requirements that required Daybreak to increase      25 cage space square inches per hen, that Daybreak</p>

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<p style="text-align: center;">42</p> <p>would charge Cargill Kitchen Solutions more per egg?</p> <p><b>A. Yes. I am aware that the requirements would have a cost implication to Daybreak Foods.</b></p> <p>Q. And I'm going to ask the same question. I realize at the end of the last question I said "per egg," and I want to ask the same question with regard to liquid egg products.</p> <p>So are you aware that complying with increased cage space requirements would entail Daybreak charging Cargill Kitchen Solutions more for liquid egg product?</p> <p>MR. VAHLE: Object to form.</p> <p><b>A. Yes, I am aware.</b></p> <p>BY MR. ONDECK:</p> <p>Q. Thank you. And I'll take one minute, and I think that I may be done. I'm going to do a quick check.</p> <p>A couple other things. Are you familiar with United Egg Producers, referred to as UEP?</p> <p><b>A. Yes. I am aware of the association.</b></p> <p>Q. Thank you. And are you aware that UEP published a set of animal management guidelines?</p> <p>MR. VAHLE: Objection, lacks foundation.</p> <p><b>A. Yes. I am aware of UEP guidelines.</b></p>	<p style="text-align: center;">44</p> <p>previous testimony.</p> <p><b>A. I did not ever require Daybreak Foods to have animal welfare requirements on any customers except specific to our -- a specific location.</b></p> <p>BY MR. ONDECK:</p> <p>Q. Thank you. And I think my last question is with regard to the time period at issue. So I'm going to ask you about the years at issue. Do you recall or -- strike that.</p> <p>Is it your general recollection that Cargill Kitchen Solutions' contracting with Daybreak started to require cage space requirements for laying hens beginning in 2007?</p> <p><b>A. I did not have recollection. That decision process resides in procurement.</b></p> <p>Q. Do you have any reason to disagree that the cage space requirements in the contracts with Daybreak began in 2007?</p> <p>MR. VAHLE: Objection, lacks foundation, calls for speculation.</p> <p><b>A. Again, I do not agree or disagree. I do not have knowledge of that process.</b></p> <p>BY MR. ONDECK:</p> <p>Q. Understood. And is it your understanding that for Daybreak to make the</p>
<p style="text-align: center;">43</p> <p>BY MR. ONDECK:</p> <p>Q. And are you familiar with UEP's certified program under which egg and liquid egg producers become certified as complying with the UEP guidelines?</p> <p>MR. VAHLE: Objection to the form.</p> <p><b>A. I have a general knowledge of those guidelines.</b></p> <p>BY MR. ONDECK:</p> <p>Q. Thank you. And were you aware that Daybreak Foods was not certified under the UEP guidelines?</p> <p><b>A. I have a general knowledge of that.</b></p> <p>Q. Thank you. And you did not ever seek to require that Daybreak became UEP certified, did you?</p> <p><b>A. I did not ever seek to do that.</b></p> <p>Q. Thank you. Did you require that Daybreak's facilities that supplied other Daybreak customers, not Cargill Kitchen Solutions -- did you ever require that those facilities comply with any animal management practices that Cargill Kitchen Solutions set forth?</p> <p>MR. VAHLE: Objection, lacks foundation, calls for speculation based on this witness'</p>	<p style="text-align: center;">45</p> <p>conversion to provide greater cage space for each laying hen, that that requires a phase-in period?</p> <p>MR. VAHLE: Objection, calls for speculation, vague and ambiguous.</p> <p><b>A. I do have an understanding that it would require a phase-in period.</b></p> <p>MR. ONDECK: Thank you very much, Mr. Profitt, for answering my questions. And at this time, that's all the questions I have, though, depending on questions that may be asked of you by other people, I may ask for follow-up. Thank you.</p> <p>MR. HUTCHINSON: Does anyone else on the phone have any questions?</p> <p>MR. GREENE: I will have questions, but I wondered if we could take a break.</p> <p>MR. SVEEN: That's fine. Why don't we take a five-minute break. Is that okay with the people on the phone?</p> <p>MR. HUTCHINSON: We're going to take a five-minute break.</p> <p>MR. CAMPBELL: We're going --</p> <p>MR. HUTCHINSON: Yes, Dick?</p> <p>MR. CAMPBELL: I will have questions, but I am going to go after the Kansas parties. All right?</p>

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<p style="text-align: right;">46</p> <p>1           MR. HUTCHINSON: Sounds good.      2           THE VIDEOGRAPHER: We're going off the      3 record at 10:28 a.m.      4           (Whereupon, a recess was taken from      5 10:28 a.m to 10:43 a.m.)      6           THE VIDEOGRAPHER: This is video      7 number 2 in the deposition of Terry Profitt taken      8 on April 8th 2014. The time now is 10:43 a.m.      9           EXAMINATION BY COUNSEL FOR MICHAEL FOODS      10          BY MR. GREENE:      11          Q. Good morning, Mr. Profitt. We met      12 before, but I'll reintroduce myself. I am William      13 Greene, counsel for Michael Foods. Good morning.      14          <b>A. Good morning.</b>      15          Q. You mentioned that Cargill Kitchen      16 Solutions produces and sells further processed      17 eggs; is that correct?      18          <b>A. That is correct.</b>      19          Q. Does Cargill Kitchen Solutions produce      20 or sell anything other than further processed eggs?      21          <b>A. At this time, no.</b>      22          Q. Okay. Was there a time when Cargill      23 Kitchen Solutions produced or sold something other      24 than further processed eggs?      25          <b>A. We were in the shell egg business up</b></p>	<p style="text-align: right;">48</p> <p>1 mean by "fresh"?      2           <b>A. Products that would have an extended</b>      3 <b>shelf life.</b>      4          Q. So extended shelf life, would that be a      5 liquid egg product?      6          <b>A. That would be refrigerated liquid egg</b>      7 <b>products.</b>      8          Q. And can you explain? What do you mean      9 by "extended shelf life"?</p> <p>10          <b>A. Those products have a longer life than</b>      11 <b>in a fresh state.</b>      12          Q. Are there other liquid egg products      13 other than extended shelf life egg products?      14          <b>A. Which --</b>      15          Q. Let me withdraw the question.      16          You've referred to extended shelf life      17 liquid egg products, correct?      18          <b>A. Yes, I have.</b>      19          Q. Okay. To your knowledge, are there      20 liquid egg products sold that are not extended      21 shelf life liquid egg products?      22          <b>A. I have no recollection or knowledge of</b>      23 <b>those types of products.</b>      24          Q. To your knowledge, does Cargill sell any      25 liquid egg products other than extended shelf life</p>
<p style="text-align: right;">47</p> <p>1 until 1989.      2          Q. But since 1989, Cargill Kitchen      3 Solutions has been involved solely in producing and      4 selling further processed eggs; is that correct?      5          <b>A. That is correct.</b>      6          Q. No other product lines?      7          <b>A. No other product lines.</b>      8          Q. I want to spend a little bit more time      9 on your background. I think that you indicated      10 that you joined Cargill Kitchen Solutions in      11 particular in 1995; is that correct?      12          <b>A. That is correct.</b>      13          Q. Okay. And from 1995 until 2004, you      14 were the complex manager at Lake Odessa, Michigan      15 facility. Did I get that correct?      16          <b>A. That is correct.</b>      17          Q. Okay. What product or products are      18 produced at the Lake Odessa, Michigan facility?      19          <b>A. All further processed egg products.</b>      20          Q. And are there any particular further      21 processed egg products that are produced at Lake,      22 Odessa Michigan?      23          <b>A. They would fall into categories of</b>      24 <b>frozen, fresh and cooked products. Egg products.</b>      25          Q. And when you say "fresh," what do you</p>	<p style="text-align: right;">49</p> <p>1 liquid egg products?      2          <b>A. Can you restate the question?</b>      3          Q. When you refer to extended shelf life      4 liquid egg products, the name itself, "extended,"      5 suggests it's longer than something. So what I'm      6 asking is, does Cargill sell any liquid egg      7 products other than extended shelf life liquid egg      8 products?      9          <b>A. Not to my knowledge.</b>      10          Q. Are you aware of any other manufacturers      11 that sell liquid egg products other than extended      12 shelf life liquid egg products?      13          <b>A. Yes. I am aware that there's other</b>      14 <b>folks that would sell those types of products.</b>      15          Q. And by "those types of products," you      16 mean liquid egg products that are not extended      17 shelf life liquid egg products, correct?      18          <b>A. That is correct.</b>      19          Q. What's the difference -- withdrawn.      20          What is the shelf life of an extended      21 shelf life liquid egg product?      22          MR. SVEEN: Counsel, I think we're      23 getting into some information considered      24 proprietary. Is there any reason this is relevant      25 to this litigation?</p>

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<p style="text-align: center;">50</p> <p>1           MR. GREENE: Yes, it's relevant. And I      2 assume that Cargill will designate the testimony,      3 if it elects to, highly confidential under the      4 protective order that applies. That means that it      5 only goes to outside counsel. So under those      6 circumstances, I understand it's propriety, but we      7 have a protective order in place.</p> <p>8           MR. SVEEN: Explain to me how it's      9 relevant to this litigation.</p> <p>10          MR. GREENE: Well, I don't need to do      11 that.</p> <p>12          MR. SVEEN: We're a third party that you      13 brought here. Explain to me how it's relevant to      14 this litigation.</p> <p>15          MR. GREENE: I'm not going to explain      16 how it's relevant to the litigation. I'm      17 representing to you in good faith it is relevant to      18 the litigation, and I don't need to explain to you      19 how it is relevant.</p> <p>20          MR. SVEEN: I appreciate your position,      21 but -- can I talk to you --</p> <p>22          MR. GREENE: Do you want to take a      23 break?</p> <p>24          MR. SVEEN: Give us two seconds.</p> <p>25          THE VIDEOGRAPHER: Going off the record</p>	<p style="text-align: center;">52</p> <p>1           are marketed in part based on their extended shelf      2 life; is that correct?</p> <p>3           <b>A. That is correct.</b></p> <p>4           Q. In general terms, how are extended shelf      5 life eggs at Cargill produced in order to --      6 withdrawn.</p> <p>7           In general terms, what is the production      8 process that Cargill uses to create the extended      9 shelf life in liquid eggs?</p> <p>10          <b>A. You do that through pasteurization      11 process.</b></p> <p>12          Q. And is that a different pasteurization      13 process than the process that's used for standard      14 liquid eggs?</p> <p>15          <b>A. Well, for example, people could sell raw      16 liquid eggs that were broken at the farm and taken,      17 let's say, to a food manufacturer that were not      18 pasteurized.</b></p> <p>19          <b>In order to get extended shelf life, you      20 must go through a pasteurization process to improve      21 the shelf life of, quote/unquote, a raw egg      22 product.</b></p> <p>23          Q. And is there any -- withdrawn.</p> <p>24          There are, I take it, pasteurized liquid      25 eggs that have a standard shelf life, correct?</p>
<p style="text-align: center;">51</p> <p>1           at 10:49.      2           (Whereupon, an off the record discussion      3 was held from 10:49 a.m to 10:57 a.m.)</p> <p>4          THE VIDEOGRAPHER: We're back on the      5 record at 10:57 a.m.</p> <p>6          BY MR. GREENE:      7           Q. Hello, Mr. Profitt.      8           <b>A. Hi.</b>      9           Q. We've just taken a break. I understand      10 there's some sensitivity about competitively      11 sensitive information. As I explained, I      12 represent -- I'm counsel for Michael Foods. And      13 for the record, who is Cargill Kitchen Solutions'      14 principal competitor in the sale of further      15 processed eggs?      16           <b>A. Michael Foods.</b>      17           Q. We talked before the break about the      18 fact that Cargill produces extended shelf life      19 liquid eggs, correct?      20           <b>A. That is correct.</b>      21           Q. And these eggs have a longer shelf life      22 than -- call it standard liquid eggs. Would that      23 be fair?      24           <b>A. That is correct.</b>      25           Q. And the extended shelf life liquid eggs</p>	<p style="text-align: center;">53</p> <p>1           <b>A. There are various shelf lives, depending      2 on the process you use to pasteurize those eggs.</b>      3           Q. What is the process that Cargill uses to      4 produce the longest of its extended shelf lives?      5           <b>A. We continue to use a high-temperature,      6 short-time pasteurization system at various      7 temperatures to achieve the various shelf life      8 specifications.</b>      9           Q. Is that a proprietary process?      10           <b>A. That is.</b>      11           Q. You testified earlier that Cargill      12 purchases both unpasteurized liquid egg and shell      13 egg to manufacture further process eggs; is that      14 correct?      15           <b>A. That is correct.</b>      16           Q. And I think at one point, you indicated      17 at least with one of the manufacturers that the      18 majority of the raw egg that Cargill purchases is      19 unpasteurized liquid as distinguished from shell      20 egg. Was that correct? Was that your testimony?      21 Let me withdraw it. I won't ask about the previous      22 testimony.      23           In the production of extended shelf life      24 liquid eggs, does Cargill use as its input      25 unpasteurized liquid or shell eggs?</p>

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<p style="text-align: right;">54</p> <p>1       <b>A. In the process of liquid egg? Is 2 that --</b></p> <p>3       Q. Right. I'm asking about extended shelf 4 life liquid eggs.</p> <p>5       <b>A. We use raw liquid egg.</b></p> <p>6       Q. In producing extended shelf life liquid 7 eggs, does Cargill ever use as its input shell 8 eggs?</p> <p>9       <b>A. No, it does not.</b></p> <p>10      Q. Why not?</p> <p>11      <b>A. We don't use that in our process by 12 design.</b></p> <p>13      Q. And when you say "by design," what are 14 the either advantages of using unpasteurized liquid 15 or disadvantages of using shell?</p> <p>16      <b>A. For the use of shell eggs in liquid -- 17 for liquid raw, you have to break those eggs. The 18 breaking process is done at our suppliers. We do 19 not have breaking capacity at our plants. So we 20 could not use shell eggs for liquid processing. It's physically impossible.</b></p> <p>21      Q. To the extent that Cargill buys shell 22 eggs, what does Cargill Kitchen Solutions use those 23 shell eggs for?</p> <p>24      <b>A. We use those shell eggs for the process</b></p>	<p style="text-align: right;">56</p> <p>1       facility produce?</p> <p>2       <b>A. There will be a variation of products 3 there.</b></p> <p>4       Q. Can you give me some examples?</p> <p>5       <b>A. A patty. An egg patty.</b></p> <p>6       Q. You say an egg patty --</p> <p>7       <b>A. That would be made into a sandwich.</b></p> <p>8       Q. Can you give me some other examples of 9 cooked products that would be produced at that 10 facility?</p> <p>11      <b>A. There are variations of those different 12 ingredients, but primarily a cooked patty product.</b></p> <p>13      Q. Earlier you mentioned, I think, four 14 facilities: Lake Odessa, Michigan; Monticello, 15 Minnesota; Mason City, Iowa; and Big Lake, 16 Minnesota. Do you recall that?</p> <p>17      <b>A. Correct.</b></p> <p>18      Q. Does Cargill Kitchen Solutions have any 19 other facilities that produce further processed 20 eggs?</p> <p>21      <b>A. We have a facility in Etobicoke, Canada.</b></p> <p>22      Q. Can you spell that one for the record?</p> <p>23      <b>A. E-t-b-i-c-o-k-e (sic).</b></p> <p>24      Q. In Canada?</p> <p>25      <b>A. In Canada.</b></p>
<p style="text-align: right;">55</p> <p>1       <b>of hard cooking and also sell shell eggs as still 2 shell eggs to some key customers.</b></p> <p>3       Q. When you say "hard cooking," can you 4 explain what you mean?</p> <p>5       <b>A. Those eggs are boiled and peeled and 6 then sold to customers.</b></p> <p>7       Q. They're sold as cooked eggs, correct?</p> <p>8       <b>A. As cooked hard-boiled eggs.</b></p> <p>9       Q. Are they sold in a package?</p> <p>10      <b>A. Yes, they are.</b></p> <p>11      Q. So would this be like a consumer 12 grab-and-go food?</p> <p>13      <b>A. There's a variation of products. Most 14 of our products are sold in food service. There 15 are some products that are sold in retail.</b></p> <p>16      Q. I'm talking particularly about the 17 hard-cooked eggs.</p> <p>18      <b>A. My last answer was specific to 19 hard-cooked.</b></p> <p>20      Q. Okay. You mentioned that at the 21 Michigan facility that you were a complex manager, 22 that the facility produced frozen, extended shelf 23 life liquid and cooked egg products, correct?</p> <p>24      <b>A. That is correct.</b></p> <p>25      Q. What cooked egg products does that</p>	<p style="text-align: right;">57</p> <p>1       Q. Does that produce products for the 2 Canadian market?</p> <p>3       <b>A. It does.</b></p> <p>4       Q. Okay. So leaving that -- the Canadian 5 facility, aside, are the four facilities that I 6 mentioned before, Lake Odessa, Monticello, Mason 7 City and Big Lake, the only U.S. egg-processing 8 facilities of Cargill Kitchen Solutions?</p> <p>9       <b>A. That is correct.</b></p> <p>10      Q. What is produced at Monticello, 11 Minnesota?</p> <p>12      <b>A. The three channels that I discussed: 13 Frozen, liquid, cooked.</b></p> <p>14      Q. The same as Lake Odessa?</p> <p>15      <b>A. Frozen, liquid, cooked.</b></p> <p>16      Q. So is there any difference between the 17 products that are produced in those two facilities?</p> <p>18      <b>A. No. Well, there are -- different 19 customers are supplied from different -- but in 20 general terms, they're very familiar.</b></p> <p>21      Q. I'm just asking about product 22 categories.</p> <p>23      <b>A. Categories, they're similar, yes.</b></p> <p>24      Q. And Mason City would be the same three 25 categories?</p>

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<p style="text-align: right;">58</p> <p>1       <b>A. Correct.</b>      2       Q. And Big Lake Minnesota, same categories?      3       <b>A. No.</b>      4       Q. What's produced in Big Lake, Minnesota?      5       <b>A. We do hard-cooked shell egg-type</b>      6       <b>products.</b>      7       Q. All hard cooked?      8       <b>A. Not a hundred percent.</b>      9       Q. What do you do at Big Lake, Minnesota,      10      other than hard-cooked products?      11      <b>A. There's further processed cooked items</b>      12      <b>similar to what we would do at our other plants.</b>      13      Q. These would be like the patties?      14      <b>A. Correct.</b>      15      Q. And then I believe you testified that in      16      2004, you became vice president and director of      17      manufacturing; is that correct?      18      <b>A. That's correct.</b>      19      Q. And is that a position that you continue      20      to hold -- you've held throughout, from 2004 to the      21      present?      22      <b>A. That is correct.</b>      23      Q. What's the position at Cargill Kitchen      24      Solutions that you report to? What's the title of      25      the position that you report to?</p>	<p style="text-align: right;">60</p> <p>1       meetings, do you hear reports from the vice      2       president in charge of sales?      3       <b>A. Yes, I do.</b>      4       Q. And do you hear reports from the vice      5       president in charge of marketing?      6       <b>A. Yes, I do.</b>      7       Q. Do you hear reports about competition in      8       the further processed egg products industry?      9       <b>A. Yes, I do.</b>      10      Q. In the context of sitting -- of      11      participating in all of those meetings, do you have      12      familiarity with the other companies that sell the      13      same processed egg products that Cargill does?      14      <b>A. Yes, I do.</b>      15      Q. What other companies sell precooked egg      16      products?      17      <b>A. To my knowledge, Michael Foods, Echo</b>      18      <b>Lake.</b>      19      Q. Are you aware of any other companies      20      besides Michael Foods and Echo Lake that produce      21      precooked egg products?      22      <b>A. Not to my knowledge.</b>      23      Q. What other companies produce and sell      24      hard-cooked egg products?      25      <b>A. There's numerous other companies that</b></p>
<p style="text-align: right;">59</p> <p>1       <b>A. President of Cargill Kitchen Solutions.</b>      2       Q. And who else -- what other titles report      3       to the president of Cargill Kitchen Solutions?      4       <b>A. Key functional areas. You want me to go</b>      5       <b>through every one of them?</b>      6       Q. Yeah. Just in title or general terms.      7       <b>A. Vice president/director of engineering,</b>      8       <b>vice president/controller, procurement manager, R&amp;D</b>      9       <b>manager. Is that enough or do you want --</b>      10      Q. Is there anybody involved on the sales      11      side --      12      <b>A. Yes.</b>      13      Q. -- who reports to the president of the      14      company?      15      <b>A. Correct. Sales manager. Marketing</b>      16      <b>manager.</b>      17      Q. Do you participate in management      18      meetings with the other individuals who report to      19      the president of Cargill Kitchen Solutions?      20      <b>A. Yes, I do.</b>      21      Q. How often?      22      <b>A. Weekly.</b>      23      Q. And this goes back to 2004?      24      <b>A. Yes. Correct.</b>      25      Q. And in the context -- during those</p>	<p style="text-align: right;">61</p> <p>1       <b>sell hard-cooked. I'm not familiar with all of</b>      2       <b>those companies. I do -- well, I'm not familiar</b>      3       <b>with all of them.</b>      4       Q. Are you familiar with any of them?      5       <b>A. I am aware that Michael Foods sells</b>      6       <b>hard-cooked egg product.</b>      7       Q. Is there any other company sitting here      8       today you can identify as a company that sells      9       hard-cooked egg products?      10      <b>A. I'm aware that Almark in Georgia sells</b>      11      <b>hard-cooked egg products.</b>      12      Q. What was the name of the company?      13      <b>A. Almark.</b>      14      Q. Can you spell that?      15      <b>A. A-l-m-a-r-k. I'm not totally --</b>      16      Q. That's okay.      17      <b>A. Close.</b>      18      Q. Other than Michael Foods and Almark, can      19      you identify any other companies that sell      20      hard-cooked egg products?      21      <b>A. Not that readily come to mind.</b>      22      Q. What about extended shelf life liquid      23      egg products? What other companies produce and      24      sell extended shelf life liquid egg products?      25      <b>A. Besides ourselves?</b></p>

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<p style="text-align: center;">62</p> <p>Q. Besides Cargill.</p> <p><b>A. To my knowledge, Michael Foods. To my knowledge, Rose Acre Farms. To my knowledge, Rembrandt Foods. I guess those are the ones that quickly come to mind.</b></p> <p>Q. Other than Cargill, Rose Acre, Michael Foods and Rembrandt, are you aware of any other companies that produce and sell extended shelf life egg products?</p> <p><b>A. Not to my recollection.</b></p> <p>Q. And these answers -- I haven't been asking you time frame, but have you understood the answers about Cargill's competitors that I'm asking about the period going back from 2004 for the present?</p> <p><b>A. Yes, I'm aware of that.</b></p> <p>Q. Would your answer be different for any portion of that period from 2004 to the present?</p> <p><b>A. To my knowledge, Rembrandt Foods was not in the further processed egg production in 2004.</b></p> <p>Q. To the best of your knowledge, when did Rembrandt begin selling further processed egg products?</p> <p><b>A. I have no specific recollection of that.</b></p> <p>Q. Other than your clarification about</p>	<p style="text-align: center;">64</p> <p>(Whereupon, an off the record discussion was held from 11:14 a.m to 11:17 a.m.)</p> <p>THE VIDEOGRAPHER: We're back on the record at 11:17 a.m.</p> <p>BY MR. VAHLE:</p> <p>Q. Mr. Profitt, we juggled positions a little bit. Can you hear me a little bit better now?</p> <p><b>A. Yes, that's good.</b></p> <p>MR. VAHLE: And can we ask for the record who is on the phone at this time?</p> <p>MR. ONDECK: You still have Chris Odeck, representing Daybreak Foods.</p> <p>MR. VAHLE: Thank you, Mr. Ondeck.</p> <p>MR. FONTECILLA: Also representing Daybreak Foods, Adrian Fontecilla with Proskauer Rose.</p> <p>MR. VAHLE: Is Mr. Campbell on at this time?</p> <p>(No reply).</p> <p>MR. VAHLE: Perhaps not now.</p> <p>BY MR. VAHLE:</p> <p>Q. Did you speak with counsel for Daybreak before your deposition this morning?</p> <p><b>A. No, I did not speak with Daybreak</b></p>
<p style="text-align: center;">63</p> <p>1 Rembrandt, your testimony about which companies 2 sell extended shelf life egg products, hard-cooked 3 eggs and precooked egg products, that testimony 4 would be the same from 2004 to the present, 5 correct?</p> <p><b>A. That is correct.</b></p> <p>MR. GREENE: I have no further questions. Thank you.</p> <p>MR. VAHLE: Any other defendants?</p> <p>EXAMINATION BY COUNSEL FOR ASSOCIATED WHOLESALE GROCERS</p> <p>BY MR. VAHLE:</p> <p>Q. I have a few questions for you, Mr. Profitt. Again, my name is Barrett Vahle. I represent a company called Associated Wholesale Grocers, who is a plaintiff in a piece of litigation in Kansas. Can you hear me fine? We're a little bit of a distance.</p> <p>THE WITNESS: Maybe you could speak up just a little more.</p> <p>MR. VAHLE: Okay, I'll try to -- let's go off the record for just a second and maybe readjust.</p> <p>THE VIDEOGRAPHER: We're going off the record at 11:14.</p>	<p style="text-align: center;">65</p> <p>1 <b>counsel.</b></p> <p>2 Q. Do you know whether your lawyer spoke 3 with Daybreak's counsel this morning?</p> <p><b>A. I have no --</b></p> <p>MR. SVEEN: Go ahead.</p> <p><b>A. I have no knowledge of whether they did or did not.</b></p> <p>BY MR. VAHLE:</p> <p>Q. Did you speak, either today or at any time before this deposition, with anyone at Daybreak about the deposition or the fact that you were going to have your deposition taken?</p> <p><b>A. No, I did not.</b></p> <p>Q. You testified a little bit earlier about McDonald's eggs produced by Daybreak. Do you recall that?</p> <p><b>A. Yes.</b></p> <p>Q. And do you recall testifying about the Graettinger, Iowa facility at Daybreak?</p> <p><b>A. Yes.</b></p> <p>Q. And where are the eggs that are produced at Daybreak's Graettinger, Iowa facility distributed?</p> <p><b>A. Primarily, they go to our Mason City, Iowa plant.</b></p>

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<p style="text-align: right;">66</p> <p>1 Q. Okay. And Mason City, Iowa, am I 2 correct that it produces egg products for 3 McDonald's?</p> <p>4 <b>A. That is a primary customer. There are 5 other customers in that plant as well.</b></p> <p>6 Q. Okay. The McDonald's eggs at the Mason 7 City plant, what states are those shipped to? What 8 areas of the country?</p> <p>9 <b>A. The eggs produced in Mason City are 10 shipped primarily west of the Mississippi.</b></p> <p>11 Q. Primarily west of the Mississippi, and 12 that would include Kansas certainly?</p> <p>13 <b>A. Most -- yeah, eggs would end up there. I'm not sure what DC actually supplies Kansas.</b></p> <p>14 Q. Is it fair to say that you know that 15 some of Daybreak's eggs are supplied to McDonald's 16 stores in Kansas?</p> <p>17 <b>A. To my knowledge, that would -- but I 18 don't know that specifically.</b></p> <p>19 Q. Okay.</p> <p>20 <b>A. But it certainly would appear that way.</b></p> <p>21 Q. Are you familiar with a company or a 22 trade name called Sunny Fresh Farms?</p> <p>23 <b>A. Specific to that, no.</b></p> <p>24 Q. Okay. Was there -- and just the general</p>	<p style="text-align: right;">68</p> <p>1 Q. Has that been true from 1999 through the 2 present?</p> <p>3 <b>A. That is correct.</b></p> <p>4 Q. And Cargill Kitchen Solutions does not 5 produce any shell eggs, correct?</p> <p>6 <b>A. That is correct.</b></p> <p>7 Q. Is Cargill Kitchen Solutions a farmer?</p> <p>8 <b>A. No, they are not.</b></p> <p>9 Q. Are you a farmer?</p> <p>10 <b>A. No, I am not.</b></p> <p>11 Q. Is Mr. Stocker a farmer?</p> <p>12 <b>A. No, he is not.</b></p> <p>13 Q. Are you familiar with Mike Luker?</p> <p>14 <b>A. Yes, I am.</b></p> <p>15 Q. And is Mr. Luker affiliated in some way 16 with Cargill Kitchen Solutions?</p> <p>17 <b>A. He is past president of Cargill Kitchen 18 Solutions.</b></p> <p>19 Q. And for what period of time, if you 20 recall, was he president?</p> <p>21 <b>A. From -- again, these are not exact. I 22 think from like 2001-ish to 2008-ish. In there.</b></p> <p>23 Q. Okay.</p> <p>24 <b>A. 9-ish. I can't remember -- recollect 25 exactly.</b></p>
<p style="text-align: right;">67</p> <p>1 term "Sunny Fresh," have you heard of that before?</p> <p>2 <b>A. Yes. We have a product with that name 3 in it.</b></p> <p>4 Q. Okay. And is that still the case today?</p> <p>5 <b>A. That is correct. It's not Sunny Fresh 6 Farms. It's Sunny Fresh Foods.</b></p> <p>7 Q. Thank you. And so am I correct that 8 Sunny Fresh Farms has never been a standalone 9 company, but it is a product made by Cargill 10 Kitchen Solutions, or a line of products?</p> <p>11 <b>A. Let me be clear. We have no product 12 called Sunny Fresh Farms. We have a product called 13 Sunny Fresh Foods.</b></p> <p>14 Q. And for how long have you had the 15 product called Sunny Fresh Foods?</p> <p>16 <b>A. For the last 15 years.</b></p> <p>17 Q. And what types of products fall within 18 the Sunny Fresh Foods line?</p> <p>19 <b>A. It could be in the channels of 20 hard-cooked, frozen, extended shelf life liquid, 21 and further processed cooked side.</b></p> <p>22 Q. I think you testified earlier that 23 Cargill Kitchen Solutions does not own any 24 egg-laying hens, correct?</p> <p>25 <b>A. That is correct.</b></p>	<p style="text-align: right;">69</p> <p>1 Q. Is it fair to say that Mr. Luker was not 2 a farmer?</p> <p>3 <b>A. That is correct.</b></p> <p>4 Q. Have you heard of UEA?</p> <p>5 <b>A. Yes, I have.</b></p> <p>6 Q. And what is UEA?</p> <p>7 <b>A. It is an egg further processing 8 association.</b></p> <p>9 Q. Okay. And is Cargill Kitchen Solutions 10 a member of UEA today?</p> <p>11 <b>A. To my knowledge, it is.</b></p> <p>12 Q. And do you know -- can you identify the 13 period of time during which Cargill Kitchen 14 Solutions has been a member of UEA?</p> <p>15 <b>A. I cannot give you specifics on the 16 tenure that we've been a member of UEA.</b></p> <p>17 Q. Has it been more than ten years?</p> <p>18 <b>A. Again, I don't know.</b></p> <p>19 Q. You testified earlier that you knew at 20 least what UEP was, correct?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. And have you from time to time attended 23 UEP meetings?</p> <p>24 <b>A. Yes, I have.</b></p> <p>25 Q. And over what period of time did you</p>

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<p style="text-align: center;">70</p> <p>1 attend UEP meetings or have you attended UEP 2 meetings?</p> <p>3     <b>A. Various stages over the last 15 years.</b></p> <p>4       Q. Okay. And what was the purpose from 5 your perspective of you attending those meetings?</p> <p>6       <b>A. To listen.</b></p> <p>7       Q. Okay. And who else from Cargill Kitchen 8 Solutions would have attended UEP meetings?</p> <p>9       <b>A. Our procurement manager and at times our 10 president of the company, and at times possibly a 11 QA manager or someone of that nature.</b></p> <p>12      Q. And your procurement manager, is that 13 Mr. Stocker?</p> <p>14      <b>A. At present, correct.</b></p> <p>15      Q. Okay. And Mr. Luker would have attended 16 at some points?</p> <p>17      <b>A. Occasionally.</b></p> <p>18      Q. Okay. Who else, if you recall, by name 19 attended UEP meetings from Cargill Kitchen 20 Solutions?</p> <p>21      <b>A. I mean, going back years, Jerry Rose, 22 who was a former president.</b></p> <p>23      Q. Anyone else you recall?</p> <p>24      <b>A. I'm drawing a -- Mary Thompson, who was 25 a past president. And current president Chris</b></p>	<p style="text-align: center;">72</p> <p>1     <b>A. Usually once.</b></p> <p>2       Q. Okay. And was there a particular 3 meeting that you went to?</p> <p>4       <b>A. I would go to Atlanta, to that meeting, 5 which is an annual poultry event that takes place 6 in Atlanta, Georgia.</b></p> <p>7       Q. Okay. Do you receive issues of the 8 United Voices newsletter?</p> <p>9       <b>A. Yes, I do.</b></p> <p>10      Q. And have you received those newsletters, 11 say, over the last 15 years?</p> <p>12      <b>A. Probably -- most recently, 13 electronically. Prior to electronically, probably 14 didn't get copies of those letters.</b></p> <p>15      Q. Okay. Do you recall when you started 16 receiving those electronically?</p> <p>17      <b>A. I can't recollect.</b></p> <p>18      Q. Okay. Was it more than five years ago?</p> <p>19      <b>A. Possibly.</b></p> <p>20      Q. Did you receive meeting minutes from UEP 21 meetings?</p> <p>22      <b>A. I received meeting minutes as a packet 23 when you attended the meeting from the previous 24 meeting.</b></p> <p>25      Q. Okay.</p>
<p style="text-align: center;">71</p> <p>1     <b>Roberts.</b></p> <p>2       Q. Now -- anyone else you can think of?</p> <p>3       <b>A. Not off the top of my head.</b></p> <p>4       Q. Fair enough. Is Cargill Kitchen 5 Solutions a member of UEP?</p> <p>6       <b>A. We are classified as an association 7 member, but we are not a, quote/unquote, voting 8 member, because we don't own any chickens.</b></p> <p>9       Q. Okay. Have you heard of a group called 10 United States Egg Marketers, or USEM?</p> <p>11      <b>A. I recollect that from years ago.</b></p> <p>12      Q. Have you ever been to any meetings where 13 USEM business was discussed that you recall?</p> <p>14      <b>A. No, I have not.</b></p> <p>15      Q. So how often -- it appears to me, 16 looking at records, that you attended UEP meetings 17 fairly regularly. Would that be fair to say?</p> <p>18        MR. GREENE: Objection to the form.</p> <p>19        MR. SVEEN: Same objection. To the 20 extent you can answer, you can.</p> <p>21      <b>A. Yes, I have been to UEP meetings. I 22 don't know what constitutes regularly.</b></p> <p>23      BY MR. VAHLE:</p> <p>24       Q. Okay. How many times a year did you go 25 to UEP meetings?</p>	<p style="text-align: center;">73</p> <p>1     <b>A. For committee meetings.</b></p> <p>2       Q. Okay. And what committee meetings did 3 you attend over the years?</p> <p>4       <b>A. I attended quality assurance committee 5 meetings. I attended animal welfare committee 6 meetings.</b></p> <p>7       <b>What do they call it? I forget the 8 exact term, but political -- I mean, where they 9 work with -- I mean with the government agency.</b></p> <p>10      Q. Government relations?</p> <p>11      <b>A. There you go. Couldn't think of the 12 word. The government relations committee.</b></p> <p>13      Q. Okay. And how about the shell egg 14 marketing committee?</p> <p>15      <b>A. No. I did not attend.</b></p> <p>16      Q. Never attended?</p> <p>17      <b>A. Never attended. To my knowledge.</b></p> <p>18      Q. Okay. Would it surprise you if meeting 19 minutes reflected that you had attended?</p> <p>20      <b>A. Could. But I can't recollect when that 21 was.</b></p> <p>22      Q. Okay. Do you know -- have you met 23 Irving Isaacson?</p> <p>24      <b>A. I am aware of Irving, yes.</b></p> <p>25      Q. Okay. Have you been in meetings with</p>

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<p style="text-align: center;">74</p> <p>1 Mr. Isaacson before?</p> <p>2     <b>A. I have sat in meetings where he was</b>      3     <b>there as legal counsel for UEP.</b></p> <p>4     Q. Okay. Did he speak during any of those      5     meetings?</p> <p>6     <b>A. Yes, he did.</b></p> <p>7     Q. Okay. What did he speak about that you      8     recall?</p> <p>9     <b>A. I cannot recall his exact words of what</b>      10     <b>he stated. He made a statement at the beginning of</b>      11     <b>UEP meetings prior to the start of those meetings.</b>      12     I can't recollect exactly what his words were.</p> <p>13     Q. Did it relate to whether the persons      14     attending the meetings were farmers, were egg      15     producers?</p> <p>16     <b>A. I recollect words around "egg</b>      17     <b>producers."</b></p> <p>18     Q. Did you ever leave after he gave that      19     preamble?</p> <p>20     <b>A. At -- again, I can't remember at</b>      21     <b>specific times. Meetings changed as to who was in</b>      22     <b>attendance and who was there as an observer or</b>      23     <b>whatever. So -- and I can't remember when.</b></p> <p>24     <b>There's been periods where there was</b>      25     <b>general discussions and then people that were not</b></p>	<p style="text-align: center;">76</p> <p>1 lawyer who was discussing that?</p> <p>2     <b>A. I do not recall the name or exactly who</b>      3     <b>discussed it.</b></p> <p>4     Q. Okay. Have you heard of the      5     Capper-Volstead Act?</p> <p>6     <b>A. I have heard of it, yes.</b></p> <p>7     Q. And what is your understanding of what      8     that act is or what it means to you?</p> <p>9     MR. SVEEN: Object to the extent it      10     calls for a legal conclusion. You can answer to      11     the extent you can.</p> <p>12     <b>A. I understand it's a legal -- what's the</b>      13     <b>right term? But it is an act that allows entities</b>      14     <b>to have a discussion. And that's really the extent</b>      15     <b>of my knowledge of it.</b></p> <p>16     BY MR. VAHLE:</p> <p>17     Q. Okay. And when you talk about entities      18     having a discussion, in the context of UEA and UEP,      19     would you include Cargill Kitchen Solutions as one      20     of those entities?</p> <p>21     <b>A. No, I would not.</b></p> <p>22     Q. Okay. Why not?</p> <p>23     <b>A. Because we were not a member.</b></p> <p>24     Q. Okay. So you were a member of UEA,      25     correct?</p>
<p style="text-align: center;">75</p> <p>1 members were asked to not be involved -- you know,      2 to leave the room.</p> <p>3     Q. But sitting here today, certainly you      4 don't recall leaving the room based on this      5 preamble that you think Mr. Isaacson gave?</p> <p>6     MR. SVEEN: Objection to form.</p> <p>7     MR. HUTCHINSON: Objection to form.</p> <p>8     <b>A. I can't recall.</b></p> <p>9     BY MR. VAHLE:</p> <p>10     Q. Okay. Do you know Kevin Haley?</p> <p>11     <b>A. No, I do not.</b></p> <p>12     Q. Do you know any other lawyers who      13 represented UEP who were at those meetings?</p> <p>14     <b>A. I recollect their faces. I can't</b>      15     <b>remember their names.</b></p> <p>16     Q. Okay. Do you recall at a meeting      17 discussing a supply management program that the      18 potato growers were working on? Do you recall that      19 subject coming up?</p> <p>20     <b>A. I recollect the term "potato growers."</b></p> <p>21     Q. Okay. Do you recall who presented      22 information at that meeting?</p> <p>23     <b>A. I do not recall the name of the</b>      24     <b>individual.</b></p> <p>25     Q. Okay. Do you recall whether there was a</p>	<p style="text-align: center;">77</p> <p>1     <b>A. Correct.</b></p> <p>2     Q. You were not a member of UEP?</p> <p>3     <b>A. That is correct.</b></p> <p>4     Q. You attended UEP meetings?</p> <p>5     <b>A. That is correct.</b></p> <p>6     Q. Do you recall discussing at those      7 meetings or the issue coming up of flock      8 reductions?</p> <p>9     <b>A. I do not recall a meeting specific to</b>      10     <b>flock reductions.</b></p> <p>11     Q. You don't recall that issue coming up at      12 all?</p> <p>13     <b>A. Can you -- I don't understand what your</b>      14     <b>question is.</b></p> <p>15     Q. Do you recall meetings where shell egg      16 producers expressed their intentions to cut their      17 flock by 5 percent?</p> <p>18     <b>A. I do not recollect any shell egg</b>      19     <b>producer in a meeting announcing to the audience</b>      20     <b>that they were going to cut shell egg production.</b></p> <p>21     Q. Do you recall that issue coming up, the      22 issue of the possibility or the intention to cut      23 shell egg production?</p> <p>24     MR. SVEEN: Object to the form.</p> <p>25     <b>A. I do not recall a discussion or a debate</b></p>

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<p style="text-align: center;">78</p> <p>1       <b>around reduction of flocks.</b>  2       BY MR. VAHLE:  3       Q. Do you recall any motions related to  4       that issue?  5       A. I don't recall any motions.  6       Q. Do you recall any discussion of early  7       molting?  8       A. I recall -- I do recall molting as a  9       part of how it related into discussions in the  10      animal welfare committee and how that was going to  11      take place.  12      Q. Okay. Do you know Gene Gregory?  13      A. Yes, I do.  14      Q. Who is Mr. Gregory?  15      A. Currently he is a retired president/CEO  16      of United Egg Producers.  17      Q. Okay. And did Mr. Gregory ever solicit  18      Cargill Kitchen Solutions' support for the UEP  19      Certified program?  20      A. Yes. We've met with Mr. Gregory around  21      that topic.  22      Q. Okay. And the purpose of the meeting  23      was that UEP and Mr. Gregory wanted Cargill Kitchen  24      Solutions to support the UEP Certified program,  25      correct?</p>	<p style="text-align: center;">80</p> <p>1       So I'm not positive as to the relationships in  2       those kind of things. So, again, those are  3       primarily procurement.  4       Q. Okay. And those would be questions for  5       Mr. Stocker?  6       A. Correct.  7       Q. Now, am I correct that during the last  8       ten to fifteen years, you have purchased eggs from  9       Daybreak based on the Urner Barry market quote?  10      A. That is correct.  11      Q. Okay. And let's go through that a  12      little bit. Do you purchase eggs today from  13      Daybreak based on the Urner Barry?  14      A. Again, I am not going to comment on  15      things that really take place in procurement.  16      Q. Okay. Do you know the answer to my  17      question one way or the other, based on your  18      personal knowledge?  19      A. Based on my personal knowledge, I do not  20      know specifics of your question.  21      Q. Okay. But you certainly do know that  22      over the -- since 2000, say, that you've purchased  23      eggs from Daybreak based on the Urner Barry?  24      A. That is correct.  25      Q. Okay. And have you purchased eggs from</p>
<p style="text-align: center;">79</p> <p>1       A. Mr. Gregory asked us our opinion of the  2       program and if it's something that we would put  3       into our business. Our answer was that's not  4       something that we saw value in at the time.  5       Q. The sales that Cargill Kitchen Solutions  6       makes to McDonald's -- well -- strike that.  7       Have you heard of the Urner Barry price  8       for eggs?  9       A. Yes, I have.  10      Q. And what is that -- what does that mean  11      to you?  12      A. Urner Barry is a marketing association  13      that helps set the value of the spot market of  14      shell eggs. So it's a marketing -- or a  15      price-setting institution.  16      Q. And what role does the Urner Barry  17      market price play in your business of Cargill  18      Kitchen Solutions?  19      A. We do have some products that may be  20      priced off the Urner Barry and we do have some  21      products inbound that we may procure off the Urner  22      Barry market quote.  23      Q. And what sorts of inbound products do  24      you procure off the Urner Barry market quote?  25      A. Again, we're getting into procurement.</p>	<p style="text-align: center;">81</p> <p>1       Sparboe since 2000 based on Urner Barry?  2       A. To my knowledge.  3       Q. Okay. And the eggs that you sell to  4       McDonald's, is Urner Barry a part of the formula or  5       analysis that goes into that pricing structure?  6       A. To my knowledge, that pricing structure  7       is based on a grain-based pricing structure that  8       uses soybean and corn.  9       Q. Okay. And if I -- again, if I wanted  10      details on that, it would be a question for  11      Mr. Stocker?  12      A. That is correct.  13      Q. And who would the person -- strike that.  14      You mentioned downstream sales based on  15      Urner Barry. To your knowledge, again, what types  16      of products downstream that Cargill Kitchen  17      Solutions sell are based on Urner Barry?  18      MR. HUTCHINSON: Objection to form.  19      A. Can I have a minute here?  20      MR. SVEEN: Sure.  21      THE VIDEOGRAPHER: We're going off the  22      record at 11:41 a.m.  23      (Whereupon, a recess was taken from  24      11:41 a.m. to 11:49 a.m.)  25      THE VIDEOGRAPHER: We're back on the</p>

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<p style="text-align: right;">82</p> <p>1 record at 11:49 a.m.      2 BY MR. VAHLE:      3 Q. I have just a few more questions,      4 Mr. Profitt.</p> <p>5 A. Okay.</p> <p>6 Q. I appreciate your time. Do you      7 understand you're still under oath?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Can you just confirm for me that      10 some of the eggs -- some of the egg products sold      11 by Cargill Kitchen Solutions are priced based on      12 Urner Barry?</p> <p>13 A. <b>Yes. Urner Barry is a component in some      14 of the pricing.</b></p> <p>15 Q. Okay. And would those include -- those      16 Urner Barry-priced eggs sold by Cargill Kitchen      17 Solutions, would those include eggs sold to you by      18 Daybreak?</p> <p>19 A. <b>Some of those eggs would, correct.</b></p> <p>20 Q. Same question with Sparboe.</p> <p>21 A. <b>To my knowledge.</b></p> <p>22 Q. Does Cargill Kitchen Solutions have any      23 business relationship with Rose Acre Farms?</p> <p>24 A. <b>Not today.</b></p> <p>25 Q. Okay. I take it that you did at some</p>	<p style="text-align: right;">84</p> <p>1 Q. Right. So they're in a different place      2 and a different time?</p> <p>3 A. <b>Correct.</b></p> <p>4 Q. And what sorts of issues -- strike that.</p> <p>5 Why do you go to the Urner Barry      6 meetings?</p> <p>7 A. <b>To listen.</b></p> <p>8 Q. Okay. And what sort of information are      9 you listening to at Urner Barry meetings?</p> <p>10 A. <b>They have guest speakers that come in      11 and talk about various topics.</b></p> <p>12 Q. Okay. And in particular, the price of      13 eggs?</p> <p>14 A. <b>No, not necessarily.</b></p> <p>15 Q. Okay. What sorts of topics might be      16 discussed?</p> <p>17 A. <b>The Urner Barry organization is a      18 pricing organization for various products beyond      19 eggs.</b></p> <p>20 Q. And this is not an egg-specific meeting?</p> <p>21 A. <b>That is correct.</b></p> <p>22 Q. Got it. Do you know K.Y. Hendrix?</p> <p>23 A. <b>I know of him.</b></p> <p>24 Q. And who is he?</p> <p>25 A. <b>He is a member -- or was a member, and</b></p>
<p style="text-align: right;">83</p> <p>1 point?</p> <p>2 A. <b>To my knowledge, years ago.</b></p> <p>3 Q. Okay. And what was the relationship at      4 that time?</p> <p>5 A. <b>We received eggs from them in a liquid      6 form, to my knowledge.</b></p> <p>7 Q. Okay. Was that liquid egg pricing based      8 on Urner Barry?</p> <p>9 A. <b>I have no recollection of what their      10 pricing was.</b></p> <p>11 Q. Okay. Do you know Marcus Rust?</p> <p>12 A. <b>I know Marcus Rust.</b></p> <p>13 Q. And how do you know Marcus Rust?</p> <p>14 A. <b>I have met Mr. Rustic at industry      15 meetings.</b></p> <p>16 Q. And those would be UEP meetings?</p> <p>17 A. <b>Or Urner Barry meetings.</b></p> <p>18 Q. Okay. And how often did you go to Urner      19 Barry meetings?</p> <p>20 A. <b>Most years.</b></p> <p>21 Q. And that's once a year?</p> <p>22 A. <b>It's an annual meeting.</b></p> <p>23 Q. Is that coordinated with the Atlanta      24 meeting of UEP or is that something different?</p> <p>25 A. <b>Two separate organizations.</b></p>	<p style="text-align: right;">85</p> <p>1 <b>I'm not sure of his status today -- of Rose Acres.</b></p> <p>2 Q. You mentioned William Rehm at Daybreak      3 earlier. Who else are you familiar with in the      4 Daybreak organization?</p> <p>5 A. <b>Tony Rehm, his brother. Some of the      6 live production people, those kind of people. But      7 Tony Rehm and Bill Rehm are my two most      8 knowledgeable contacts.</b></p> <p>9 Q. Okay. And you have contact with them in      10 the course of your business relationship, I take      11 it?</p> <p>12 A. <b>Correct.</b></p> <p>13 Q. And you would also see them at UEP      14 meetings as well?</p> <p>15 A. <b>Yes.</b></p> <p>16 Q. Okay. Do you know Loren Ashe from      17 Daybreak?</p> <p>18 A. <b>Yes, I do.</b></p> <p>19 Q. And would you see him at UEP meetings as      20 well?</p> <p>21 A. <b>That is correct.</b></p> <p>22 Q. Okay. What about Patricia or Pat      23 Stonger?</p> <p>24 A. <b>Yes.</b></p> <p>25 Q. Okay. And how do you know Ms. Stonger?</p>

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<p style="text-align: right;">86</p> <p><b>A. Again, from industry meetings and our business relationship.</b></p> <p>Q. Okay. Do you know Paul Sauder?</p> <p><b>A. Yes. I know Paul.</b></p> <p>Q. And how do you know Paul Sauder?</p> <p><b>A. Again, he is a member of UEP, and I know him from an association.</b></p> <p>Q. Do you have any business relationship at all with Sauder Eggs?</p> <p><b>A. We do not do business with Sauder Eggs.</b></p> <p>MR. VAHLE: That's all I have right now. Thank you.</p> <p>THE WITNESS: Thank you.</p> <p>MR. HUTCHINSON: Mr. Campbell, do you want to go ahead and ask your questions now?</p> <p>MR. CAMPBELL: Yes, Troy, I do. I apologize to the assembled group for the awkwardness of this, but I would like the court reporter to mark the following documents in the next sequence. I believe Exhibit 2 is next, but I may be incorrect about that.</p> <p>MR. HUTCHINSON: You are correct about that.</p> <p>MR. CAMPBELL: All right. Exhibit 2 would be the producer meeting, December 6, 2005.</p>	<p style="text-align: right;">88</p> <p>THE VIDEOGRAPHER: We're back on the record at 12:02 p.m.</p> <p><b>EXAMINATION BY COUNSEL FOR THE KRAFT PLAINTIFFS BY MR. CAMPBELL:</b></p> <p>Q. Mr. Profitt, my name is Richard Campbell. I am a lawyer with Jenner &amp; Block in Chicago. I represent Kraft, Nestle, Kellogg and General Mills in this Processed Eggs Litigation. I have a few questions for you, if I may.</p> <p>You testified that Cargill Kitchen Solutions was -- I thought you said an associate member of UEP. Is that correct?</p> <p><b>A. To my understanding of our membership, correct.</b></p> <p>Q. What is an associate member?</p> <p><b>A. We can attend meetings and those kind of things, but we don't have, quote/unquote, voting rights because we're not an owner of birds or chickens. We are not a producer.</b></p> <p>Q. Who invited you to the UEP meetings that you attended?</p> <p><b>A. I mean, it's an industry meeting that associates, equipment manufacturers, anyone associated with the egg production, egg poultry business can attend.</b></p>
<p style="text-align: right;">87</p> <p>MR. HUTCHINSON: Is there a Bates number on it, Mr. Campbell?</p> <p>MR. CAMPBELL: There is. NL217575.</p> <p>MR. HUTCHINSON: Mr. Campbell, can you remind me who you represent?</p> <p>MR. CAMPBELL: Yes. I was going to explain that to Mr. Profitt. My name is Richard Campbell. I'm with the law firm of Jenner &amp; Block in Chicago and elsewhere. I represent Kraft, Nestle, Kellogg and General Mills in this litigation.</p> <p>MR. HUTCHINSON: Thank you. I think it makes sense to go off the record. Are you going to mark multiple exhibits now?</p> <p>MR. CAMPBELL: There are just five exhibits, Troy. I thought it would be easier to just mark them.</p> <p>MR. HUTCHINSON: Yeah. Let's just go off the record and do it.</p> <p>THE VIDEOGRAPHER: We are going off the record at 11:57 a.m.</p> <p>(Whereupon, a recess was taken from 11:57 a.m. to 12:02 p.m.)</p> <p>(Cargill Exhibits 2 through 6 were marked for identification.)</p>	<p style="text-align: right;">89</p> <p>Q. And you testified earlier that you went to those meetings, and I quote, to listen. Is that correct?</p> <p><b>A. That is correct.</b></p> <p>Q. And did you listen?</p> <p><b>A. Yes, I did.</b></p> <p>Q. All right. And what did you hope to learn?</p> <p><b>A. It was a way for our company to keep an understanding of the issues and the things that were going on in the poultry -- or in the egg industry.</b></p> <p>Q. Did you participate in any of the meetings? And by that, I mean did you speak.</p> <p><b>A. To my knowledge, I can't recollect having spoken at these meetings, to my recollection.</b></p> <p>Q. Did you ever speak privately to any UEP executives like Gene Gregory or Al Pope?</p> <p><b>A. I can't remember what conversations I may have had years ago.</b></p> <p>Q. No. My question was did you have such conversations.</p> <p><b>A. Have I ever spoke to Gene Gregory? Yes, I have. Have I ever spoke to Al Pope? Yes, I</b></p>

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<p style="text-align: right;">90</p> <p>1       <b>have.</b></p> <p>2       Q. At UEP annual or committee meetings?</p> <p>3       A. <b>I have spoke to them at those meetings.</b></p> <p>4       Q. All right. If you'll look at Exhibit 2, 5 I assume Troy has passed out those to your counsel.</p> <p>6       A. <b>Yes.</b></p> <p>7       MR. CAMPBELL: I'm sorry. I missed 8 who's representing the witness here.</p> <p>9       MR. SVEEN: Andy Sveen on behalf of 10 Cargill. And Mr. Profitt has the exhibits.</p> <p>11       MR. CAMPBELL: All right. That's 12 wonderful.</p> <p>13       BY MR. CAMPBELL:</p> <p>14       Q. If you'll look at Exhibit 2, 15 Mr. Profitt, which is entitled "Producer Meeting in 16 Minneapolis, December 6, 2005." Do you see that?</p> <p>17       A. <b>Yes, I do.</b></p> <p>18       Q. And it shows that you and Mr. Stocker 19 both attended that meeting; is that correct?</p> <p>20       A. <b>That is correct.</b></p> <p>21       Q. Do you recall attending that meeting?</p> <p>22       A. <b>I do recall attending that meeting.</b></p> <p>23       Q. All right. And if you'll see in the 24 bold the words "Issues and concerns expressed by 25 producers." Do you see that?</p>	<p style="text-align: right;">92</p> <p>1       Q. Do you recall attending that meeting?</p> <p>2       A. <b>I recall attending meetings in San 3 Antonio, Texas, correct.</b></p> <p>4       Q. All right. And if you'll see in a bold 5 portion down there. Underlined words "United 6 Potato Growers"?</p> <p>7       A. <b>That is correct.</b></p> <p>8       Q. And it says, "Gregory reported hearing 9 from several members about the Wall Street Journal 10 story reporting on the forming of a cooperative to 11 address supply conditions by potato growers. He 12 reported having spoken with the CEO of the United 13 Potato Growers about the potential for him and 14 their attorney to meet with UEP."</p> <p>15       Does that refresh your recollection 16 about the discussion about United Potato Growers at 17 that meeting?</p> <p>18       A. <b>My recollection of that meeting was only 19 that I remember someone from the United Potato 20 Growers was there. Specific to that meeting, I do 21 not recollect.</b></p> <p>22       Q. And did that representative of United 23 Potato Growers speak?</p> <p>24       A. <b>To the best of my recollection.</b></p> <p>25       Q. And what was the substance of what he</p>
<p style="text-align: right;">91</p> <p>1       A. <b>Yes.</b></p> <p>2       Q. And if you'll look at the number 13 3 which reads, "The UEP Certified program is, as 4 such, a market restriction." Do you remember 5 discussion of that issue?</p> <p>6       A. <b>No, I do not.</b></p> <p>7       Q. Do you have a view -- strike that.</p> <p>8       Does Cargill Kitchen Solutions have a 9 view as to whether or not the UEP Certified program 10 is a market restriction?</p> <p>11       MR. HUTCHINSON: Object to form.</p> <p>12       A. <b>No, we do not.</b></p> <p>13       BY MR. CAMPBELL:</p> <p>14       Q. Do you have a personal view as to 15 whether the UEP Certified program is a market 16 restriction?</p> <p>17       A. <b>No, I do not.</b></p> <p>18       Q. All right. If you'll turn to Exhibit 3. 19 Do you have it, Mr. Profitt?</p> <p>20       A. <b>Yes, I do.</b></p> <p>21       Q. It's entitled "UEP Marketing Committee, 22 October 11th 2006, San Antonio, Texas," and it 23 shows you in attendance, fourth line up from the 24 bottom on the left side. Do you see that?</p> <p>25       A. <b>Okay. Yes, I see.</b></p>	<p style="text-align: right;">93</p> <p>1       said?</p> <p>2       A. <b>As I just stated, I can't remember what 3 he said.</b></p> <p>4       Q. All right. If you'd turn to the second 5 page of that document, Exhibit 3, looking at the 6 bold and underlined in the center of the page 7 called "Call for Committee Recommendations." Do 8 you see that?</p> <p>9       A. <b>Yes, I do.</b></p> <p>10       Q. And the committee -- who's Doug Wicker? 11 Do you know?</p> <p>12       A. <b>I have no idea.</b></p> <p>13       Q. All right. It says, "Mr. Wicker spoke 14 in support of the industry committee to a hatch 15 reduction plan."</p> <p>16       You testified in response to some 17 questions a few minutes ago you had no recollection 18 of any such discussions. Do you recall that?</p> <p>19       A. <b>Yes.</b></p> <p>20       Q. Does this refresh your recollection that 21 a hatch reduction plan was discussed at this 22 meeting?</p> <p>23       A. <b>No. It does not refresh my 24 recollection.</b></p> <p>25       Q. But you were there listening, right?</p>

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<p style="text-align: right;">94</p> <p>1       <b>A. That is correct.</b>      2       Q. All right. Would you please turn to      3       Exhibit 4 --      4       <b>A. Okay.</b>      5       Q. -- entitled "UEP Marketing Committee      6       Meeting Greensboro Georgia - October 15th 2008."      7       <b>A. Okay.</b>      8       Q. And it shows you under "Additional      9       Attendees," third line down in about the middle.      10      <b>A. Okay.</b>      11      Q. Do you see that?      12      <b>A. Yes.</b>      13      Q. Do you recall attending this meeting?      14      <b>A. That meeting specifically, I don't      15       recall, but obviously --</b>      16      Q. Do you have any reason -- I'm sorry. I      17       interrupted you. You go ahead.      18      <b>A. Obviously I'm not denying that it shows      19       I was there. I do not recall the meeting.</b>      20      Q. All right. Would you turn to the third      21       page which is Bates labeled ending in 15.      22      <b>A. Okay.</b>      23      Q. Do you know who Mike McGriff is?      24      <b>A. Vaguely. I think he's part of the UEP      25       government relations group.</b></p>	<p style="text-align: right;">96</p> <p>1       BY MR. CAMPBELL:      2       Q. Take your time and read it, Mr. Profitt.      3       I don't mean read the whole document, but read      4       whatever you need to read in order to understand      5       it.      6       MR. SVEEN: Page through it, Terry, just      7       so you know what this says.      8       MR. HUTCHINSON: Mr. Campbell, are you      9       aware that this Exhibit 5 is actually multiple      10       documents?      11      MR. CAMPBELL: I am. That's how --      12      Troy, that's how I received them. And I      13       understood -- they have consecutive numbers, so I      14       assumed that they went together. I'm going to ask,      15       however, only about the first document, 21 through      16       25.      17      MR. SVEEN: 21 through 25 or 21 through      18       24?      19      MR. CAMPBELL: I'm sorry. I misspoke.      20      24. You're correct.      21      THE WITNESS: Go ahead.      22      BY MR. CAMPBELL      23      Q. Yeah. Maybe that would shortcut it.      24       Have you seen this document before,      25       Mr. Profitt?</p>
<p style="text-align: right;">95</p> <p>1       Q. All right. If you'll look under the      2       "Industry Statistics" which states that "Mike      3       McGriff of UEP provided a recap of industry      4       statistics." Do you see that?      5       <b>A. Yes, I do.</b>      6       Q. And the first one states -- the first      7       bullet point states, "The monthly hen inventory for      8       July-September '08 was at the lowest level for any      9       period during the previous five years." Do you      10       recall that discussion?      11      <b>A. No, I do not.</b>      12      Q. Do you recall any discussion about hen      13       inventory at any point in time in any meeting?      14      <b>A. No, I do not.</b>      15      Q. But, again, you were there listening,      16       right?      17      <b>A. Yeah. And -- yes, I was.</b>      18      Q. Okay. Would you be kind enough to turn      19       to Exhibit 5 which has -- appears to be on Sparboe      20       letterhead.      21      <b>A. Yes.</b>      22      Q. And it shows under number 9 that Sunny      23       Fresh Foods was supporting the position taken in      24       this memorandum. Am I reading that correctly?      25      MR. SVEEN: Take a look through the --</p>	<p style="text-align: right;">97</p> <p>1       <b>A. No, I have not.</b>      2       Q. If you'll turn to page 23. You see in      3       the bottom right-hand corner --      4       MR. SVEEN: It's page 3 of the document.      5       <b>A. Okay.</b>      6       BY MR. CAMPBELL:      7       Q. You'll see under "Problem No. 3 - The      8       Audit Process," and it says, "The audit program      9       could be construed to be unconcerned whether a      10       producer is humanely handling/molting and beak      11       trimming layers. This is not true of density." Do      12       you see that?      13      <b>A. I'm sorry. What part of this --</b>      14      Q. "Problem No. 3 - The Audit Process" --      15      <b>A. Okay.</b>      16      Q. -- under numbered paragraph number 1.      17      <b>A. Okay. Okay. State it again.</b>      18      Q. The second sentence. "Thus, the audit      19       program could be construed to be unconcerned      20       whether a producer is humanely handling/molting and      21       beak trimming layers. This is not true of density.      22       Here there is a total knockout factor on space."      23       Did you ever discuss that statement with      24       anybody in Cargill Kitchen Solutions?      25      <b>A. That statement specifically? Not to my</b></p>

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<p style="text-align: center;">98</p> <p><b>knowledge.</b></p> <p>Q. Did you ever discuss whether the UEP Certified guidelines, in fact, treated different elements of the guidelines differently in the audit?</p> <p>MR. SVEEN: Objection to the form of the question.</p> <p>THE WITNESS: I'm sorry. I didn't understand your objection.</p> <p>MR. SVEEN: To the extent you can understand his question, go ahead and answer.</p> <p><b>A. We did not get involved in the UEP audit process. So I have no --</b></p> <p>BY MR. CAMPBELL:</p> <p>Q. So the answer -- so the answer to my question is, no, you had no such discussions, correct?</p> <p><b>A. Correct.</b></p> <p>Q. All right. That's fine. Turn to Exhibit 6, if you will.</p> <p><b>A. Okay.</b></p> <p>Q. Have you seen this letter from Mr. Stocker before?</p> <p><b>A. No, I have not.</b></p> <p>Q. And who is -- you report to Mr. Stocker;</p>	<p style="text-align: center;">100</p> <p>of UEA is an egg further processing association, not an egg -- chicken production association.</p> <p>Q. But that begs the question, does it not, whether or not it's controlled by UEP?</p> <p>MR. SVEEN: Object to the form.</p> <p><b>A. I cannot speculate on what's in someone's mind.</b></p> <p>BY MR. CAMPBELL:</p> <p>Q. So you just don't know the answer to that either way; is that correct?</p> <p><b>A. I do not know the answer of someone believes it's a part of UEP. I do not have an answer for that.</b></p> <p>Q. Well, it doesn't say it's a part of. It says it's controlled by. Do you have an answer for that?</p> <p>MR. GREENE: Object to form.</p> <p>MR. SVEEN: Same objection.</p> <p><b>A. I am not an active participant in UEA; therefore, not qualified to even discuss this.</b></p> <p>MR. CAMPBELL: All right. I have no further questions, gentlemen.</p> <p>MR. HUTCHINSON: I just have a couple of questions on these documents. Very short.</p> <p>FURTHER EXAMINATION BY COUNSEL FOR SPARBOE FARMS</p>
<p style="text-align: center;">99</p> <p>do you not?</p> <p><b>A. No, I do not.</b></p> <p>Q. Oh. He's head of production?</p> <p><b>A. He's the head of procurement.</b></p> <p>Q. Procurement. I'm sorry. I misspoke. You're right. You said that clearly before.</p> <p>Do you know who Ken Klippen is?</p> <p><b>A. I have met Mr. Klippen.</b></p> <p>Q. And what's your understanding of who he is?</p> <p><b>A. I have no idea what he does today. At one point, he was a part of UEP and left UEP and I think formed his own business.</b></p> <p>Q. All right. If you'll look at the fourth paragraph down --</p> <p><b>A. Okay.</b></p> <p>Q. -- it says, "In addition, it is clear that UEA does have some autonomy issues. It became very clear at the last meeting that UEA is clearly controlled by UEP." Is that your understanding, that UEA was clearly controlled by UEP?</p> <p><b>A. That was not my understanding at all.</b></p> <p>Q. All right. Do you have a contrary understanding?</p> <p><b>A. As previously stated, my understanding</b></p>	<p style="text-align: center;">101</p> <p>BY MR. HUTCHINSON:</p> <p>Q. Mr. Profitt, referring you to Exhibit 2 --</p> <p><b>A. Okay.</b></p> <p>Q. -- do you see anyone listed in the attendees at this meeting from Sparboe?</p> <p><b>A. No, I do not.</b></p> <p>Q. Do you recall whether anyone from Sparboe attended this meeting?</p> <p><b>A. Vaguely I remember that there was a representative there.</b></p> <p>Q. Do you know who it was?</p> <p><b>A. I thought it was Beth Schnell, but I cannot remember exactly. I can't.</b></p> <p>Q. And do you remember whether Ms. Schnell spoke at the meeting at all?</p> <p><b>A. I do not remember whether she did or didn't.</b></p> <p>Q. In Exhibit 3, do you see anyone from Sparboe listed among those being present at this meeting?</p> <p><b>A. Are you referring to the call to order list of people there?</b></p> <p>Q. Yes.</p> <p><b>A. At a quick glance, I do not see anyone</b></p>

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<p style="text-align: center;">102</p> <p>1       <b>that I can recollect was from Sparboe.</b>      2       Q. And do you recall whether anyone from      3       Sparboe attended this meeting?      4       <b>A. I cannot recall that, whether they did</b>      5       <b>or they didn't.</b>      6       Q. And I'll refer you to Exhibit 4. Do you      7       see anyone from Sparboe listed among the attendees      8       at this meeting?      9       <b>A. As of a quick scan, I do not see.</b>      10      Q. And do you remember, was anyone from      11       Sparboe in attendance at this meeting?      12       <b>A. Again, I can't remember myself attending</b>      13       <b>this meeting, even though it says I did.</b>      14      Q. And do you know that -- the meeting is      15       dated October 15th 2008. Do you know whether at      16       that time Sparboe was a UEP member?      17       <b>A. I do not remember when they were members</b>      18       <b>and when they weren't. I know they have been and</b>      19       <b>out and back. So I can't remember at what point</b>      20       <b>they were a member and at what point they were not</b>      21       <b>a member.</b>      22      Q. Did anyone from Sparboe ever communicate      23       to you their opinion of the UEP animal welfare      24       program?      25       <b>A. To my recollection, they -- Beth had</b></p>	<p style="text-align: center;">104</p> <p>1       MR. SVEEN: Who is this?      2       MR. HUTCHINSON: That's Chris Ondeck.      3       MR. ONDECK: It's Chris Ondeck for      4       Daybreak Foods. So then just asking the people in      5       the room, is that okay?      6       MR. SVEEN: Yeah. Let's just push      7       through, I think. Yeah. Go ahead.      8       FURTHER EXAMINATION BY COUNSEL FOR DAYBREAK FOODS      9       BY MR. ONDECK:      10      Q. All right. Mr. Profitt, so it's Chris      11       Ondeck, representing Daybreak Foods again. And      12       just a couple of follow-up questions.      13       You may recall that one of the lawyers      14       who questioned you two lawyers ago, his name is      15       Mr. Barrett Vahle, asked you about your knowledge      16       of something called the Capper-Volstead Act. Do      17       you recall that?      18       <b>A. Yes. I recall that question.</b>      19      Q. And just to confirm, you're not a      20       lawyer, are you?      21       <b>A. No, I'm not.</b>      22      Q. Okay. Do you hold yourself out as an      23       expert on the Capper-Volstead Act?      24       <b>A. I'm far from an expert in anything.</b>      25      Q. Okay. And also not an expert on the</p>
<p style="text-align: center;">103</p> <p>1       <b>made comments to her opinions of UEP.</b>      2       Q. And what was Ms. Schnell's opinion of      3       the UEP animal welfare program?      4       <b>A. There were parts of the program, to my</b>      5       <b>recollection, that she did not a hundred percent</b>      6       <b>agree with. I cannot remember the specifics of</b>      7       <b>which parts she agreed with and which parts she did</b>      8       <b>not agree with.</b>      9       Q. So she voiced to you her disagreement      10       with that program, correct?      11       <b>A. As I said, she voiced some disagreements</b>      12       <b>with parts of the program. I can't remember which</b>      13       <b>parts.</b>      14      Q. And did anyone else from Sparboe express      15       similar disagreement or agreement with the UEP      16       program?      17       MR. VAHLE: Objection, restates the      18       witness' previous testimony.      19       <b>A. I did not have conversations with a lot</b>      20       <b>of other people in Sparboe about this topic.</b>      21      MR. HUTCHINSON: I have no further      22       questions. We can go off the record.      23      MR. ONDECK: Actually, Troy -- excuse      24       me. A frog in my throat. Can I ask a couple      25       follow-up questions?</p>	<p style="text-align: center;">105</p> <p>1       Capper-Volstead Act?      2       <b>A. That is correct.</b>      3       Q. Okay. And just to specifically confirm,      4       are you familiar with the exact text of the words      5       in that statute?      6       <b>A. I am not.</b>      7       Q. And then the second question I'd like to      8       ask you is, you were asked by both of the lawyers      9       who previously questioned you about Cargill Kitchen      10       Solutions' attendance and participation at UEP      11       meetings. Do you recall that?      12       <b>A. Yes. I recall that.</b>      13      Q. And you stated -- I'm sorry to interrupt      14       you.      15       And you stated that UEP was not a member      16       that voted; is that correct?      17       <b>A. I don't understand the question.</b>      18      Q. I misspoke. You stated that Cargill      19       Kitchen Solutions was not a company that voted at      20       UEP meetings; is that correct?      21       <b>A. That is correct. We are not a voting</b>      22       <b>member of UEP.</b>      23      Q. Okay. To the best of your knowledge,      24       did Cargill Kitchen Solutions ever attempt to sneak      25       in a vote at a UEP vote?</p>

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<p style="text-align: center;">106</p> <p>1           MR. SVEEN: Object to -- go ahead.</p> <p>2       <b>A. I'm sorry. Not to my knowledge did we</b>  <b>3 ever try to sneak in a vote.</b></p> <p>4       <b>BY MR. ONDECK</b></p> <p>5       Q. Good. Then the last thing that I wanted         6 to ask you about was you were asked questions by         7 Mr. Barrett Vahle about Urner Barry and sales that         8 were made using the Urner Barry index to Cargill         9 Kitchen Solutions. Do you recall that generally?</p> <p>10     <b>A. Yes, I do.</b></p> <p>11     Q. Okay. And what I want to ask you about         12 is, is it your understanding that the majority of         13 products that Daybreak sells Cargill Kitchen         14 Solutions is sold pursuant to written supply         15 agreements?</p> <p>16     MR. VAHLE: Objection to form.</p> <p>17     <b>A. That is correct.</b></p> <p>18     MR. VAHLE: Sorry to interrupt you.</p> <p>19     <b>A. That is correct.</b></p> <p>20     <b>BY MR. ONDECK:</b></p> <p>21     Q. And just to confirm, those written         22 supply agreements contain pricing provisions that         23 use, as we discussed, grain-based pricing formulas         24 and do not use Urner Barry; is that correct?</p> <p>25     <b>A. To my general knowledge of those</b></p>	<p style="text-align: center;">108</p> <p>1           <b>BY MR. VAHLE:</b></p> <p>2       Q. When Mr. Ondeck just asked you those         3 questions, were you changing any of the testimony         4 you gave previously?</p> <p>5       MR. HUTCHINSON: Objection to form.</p> <p>6       <b>A. To my knowledge, I haven't. I've been</b>         7 <b>asked a lot of questions this morning, so I don't</b>         8 <b>think so.</b></p> <p>9       <b>BY MR. VAHLE:</b></p> <p>10     Q. I understand.</p> <p>11     <b>A. But I don't think so.</b></p> <p>12     MR. VAHLE: That's all I have.</p> <p>13     THE VIDEOGRAPHER: We're going off the         14 record at 12:29.</p> <p>15     (Reading and signing reserved).</p> <p>16     (Whereupon, at 12:29 p.m. the videotaped         17 deposition was adjourned.)</p> <p>18     * * * * *</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: center;">107</p> <p>1       <b>contracts, that is correct.</b></p> <p>2       Q. When is Urner Barry used for pricing         3 sales of products that Daybreak sells to Cargill         4 Kitchen Solutions?</p> <p>5       <b>A. Again, that is a procurement question</b>         6 <b>that I would feel more comfortable procurement</b>         7 <b>answering. But as a general knowledge, those are</b>         8 <b>what we would call spot purchases.</b></p> <p>9       Q. Okay. And would it be your         10 understanding that the vast majority of product         11 that Daybreak sells Cargill Kitchen Solutions is         12 under contract and not spot purchases?</p> <p>13     MR. VAHLE: Objection to the form, lacks         14 foundation, calls for speculation.</p> <p>15     <b>BY MR. ONDECK</b></p> <p>16     Q. You can answer.</p> <p>17     <b>A. That is correct.</b></p> <p>18     MR. ONDECK: Okay. Thank you very much         19 for your time. And nothing further from me.</p> <p>20     MR. HUTCHINSON: Go off the record?</p> <p>21     MR. VAHLE: I just have one more         22 question.</p> <p>23     <b>FURTHER EXAMINATION BY COUNSEL FOR THE</b>         24 <b>ASSOCIATED WHOLESALE GROCERS</b></p> <p>25</p>	<p style="text-align: center;">109</p> <p>1           <b>ACKNOWLEDGMENT OF DEPONENT</b></p> <p>2</p> <p>3       I, _____, do hereby         4 acknowledge that I have read and examined the         5 foregoing testimony, and the same is a true, correct         6 and complete transcription of the testimony given by         7 me, and any corrections appear on the attached Errata         8 Sheet signed by me.</p> <p>9</p> <p>10</p> <p>11</p> <p>12     _____         13     _____         14     _____         15     _____         16     _____         17     _____         18     _____         19     _____         20     _____         21     _____         22     _____         23     _____         24     _____         25</p>

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1                   REPORTER'S CERTIFICATE  
2

3                   STATE OF MINNESOTA         )  
4    ss.  
5                   COUNTY OF HENNEPIN         )  
6                   I hereby certify that I reported the  
7                   deposition of TERRY W. PROFITT on April 8, 2014, in  
8                   Minneapolis, Minnesota, and that the witness was by  
9                   me first duly sworn to tell the whole truth;  
10

11                  That the testimony was transcribed by me  
12                  and that this transcript is a true record of the  
13                  testimony of the witness;

14                  That the cost of the original has been  
15                  charged to the party who noticed the deposition,  
16                  and that all parties who ordered copies have been  
17                  charged at the same rate for such copies;

18                  That I am not a relative or employee or  
19                  attorney or counsel of any of the parties, or a  
20                  relative or employee of such attorney or counsel;

21                  That I am not financially interested in  
22                  the action and have no contract with the parties,  
23                  attorneys, or persons with an interest in the  
24                  action that affects or has a substantial tendency  
25                  to affect my impartiality.

26                  WITNESS MY HAND AND SEAL THIS 10th day  
27                  of April, 2014.

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